

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2846 of 2019

Dr. Md. Alamgir Son of Late Tauheer Hasan Resident of Minhaj Nagar,
Opposite Imarat Sharia, Phulwarisharif, P.S.- Phulwarisharif, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar and Ors through the Principal Secretary, Education Department, Bihar, Patna
2. Secretary, Office of Lokayukta, Bihar, 4, Kautilya Marg, Patna- 800001
3. Patna University, Patna through its Registrar
4. Vice Chancellor, Patna University, Patna
5. Registrar, Patna University, Patna
6. Syed Ehteshan Khan Son of not known to the petitioner, Resident of Pandariba Lane, P.O.- Jhauganj, P.S.- Khajekalan, District- Patna, Pin- 800008
7. Hena Kausar Daughter of Shri Ehsan Ahmad Khan Resident of Ramavtar Prasad Khatri Path, Diwan Mohalla, Hamam, Patna City, District- Patna, Pin- 800008

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Adv Mr. Arpit Anand, Adv Mr. Pushkar Bharadwaj, Adv
For the State	:	Mr. Kamal Kumar Nayan (AC to SC-28)
For the Patna University	:	Mr. Kinkar Kumar, Adv

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 19-02-2024

Heard Mr. Abhinav Srivastava, learned counsel on behalf of the petitioner, Mr. K.K. Nayan (AC to SC-28) for the State as well as Mr. Kinkar Kumar, learned counsel appearing on behalf of the Patna University (herein after referred to as the “University”).

2. By the present writ application, the petitioner seeks following relief:-



(i) Issuance of a direction, order or writ quashing that part of the order dated 19.09.2018 passed in the Complaint bearing No.1/ Lok (Education) 26/2016 by the Institution of Lokayukta, Bihar, Patna by which notwithstanding the fact that the University being the disciplinary authority of the petitioner had already issued a notification dated 16.08.2018, by which certain punishments in terms of the Service Statutes applicable in the cases of the employees of the University have already been inflicted upon the petitioner, the subject matter of allegations against the petitioner had been directed to be examined by an enquiry committee constituted by the Institution of Lokayukta.

(ii) For issuance of a direction, order or writ commanding the Institution of Lokayukta, Patna, Bihar to refrain from proceeding further in the matter relating to the petitioner on the basis of report submitted by a committee constituted pursuant to the orders passed by the Hon'ble Chancellor of Universities and also on the basis of a detailed Department of enquiry conducted by the University, punishments have already been inflicted upon the petitioner, which are subject matter of one C.W.J.C. No.11573/2018 and C.W.J.C. No.17226/2015, which are pending adjudication before this Court.

(iii) For issuance of any other relief/reliefs that the



petitioner may be found to be entitled to in the facts and circumstances of the present case.

3. Mr. Abhinav Srivastava, learned counsel appearing on behalf of the petitioner submits that on the basis of the recommendation made by the erstwhile Bihar State University (Constituent Colleges) Service Commission following a full-fledged process of selection, petitioner was appointed against the post of Lecturer in Commerce in the University and on 05.11.1996, he submitted his joining against the said post, which was duly accepted by the concerned Authorities. Thereafter, petitioner started discharging his duties in the capacity of Lecturer of Commerce in the University in accordance with law. Later on, petitioner was promoted in the rank of Associate Professor in Commerce w.e.f 05.11.2008 in the services of the University. While, the petitioner was continuing in service as Associate Professor in Commerce of the University, by a notification dated 23.05.2014, issued by the orders of the Chancellor of Universities, Patna, Bihar, petitioner was appointed against the post of Controller of Examinations under Maulana Mazharul Haque Arabic & Persian University, Patna, on deputation.

4. He further submits that, while the petitioner was



continuing his service as Controller of Examinations under the Maulana Mazharul Haque Arabic & Persian University, Patna, certain complaints were made before the Chancellor of the Universities, Patna, Bihar. In pursuance thereof, an enquiry was conducted by a retired Hon'ble Judge of this Court, who submitted his report and on the basis of the said report, on 25.11.2016, a letter was issued by the concerned Authorities (Annexure-2 to this writ petition), by which the Vice Chancellor of Maulana Mazharul Haque Arabic & Persian University, Patna was directed to replace the petitioner from the post of Controller of Examinations.

5. He further submits that the petitioner was neither been given any opportunity of being heard nor a copy of the enquiry report was furnished to him and in this manner, he was sought to be removed from the post of Controller of Examinations only on the basis of an enquiry which was conducted deceitfully.

6. In furtherance of the letter dated 25.11.2016, petitioner was relieved from the post of Controller of Examinations of Maulana Mazharul Haque Arabic & Persian University, Patna and on 27.11.2016 and he submitted his joining as Associate Professor in Commerce in the Department of Applied Economics and Commerce under the University which was duly



accepted by the concerned Authorities.

7. Mr. Srivastava further submits that another letter dated 31.07.2017 was issued by the concerned Authorities under the Governor's Secretariat, Bihar, Patna, by which the V.C. of Maulana Mazharul Haque Arabic & Persian University, Patna was directed to take action against the petitioner on the basis of the enquiry report and the University was also directed to submit the action taken within a period of 15 days from the date of receipt of the said letter.

8. He further submits that the petitioner submitted his detailed explanations along with the supporting documents flatly denying the charges levelled against him. While stating the facts, petitioner requested the concerned Authorities under the University to accept his clarifications. He submits that a letter dated 24.01.2018 bearing letter no.G/2026 was issued by the University, without even examining or considering the detailed explanation of the petitioner with respect to the charges levelled against him. A notification dated 22.02.2018, bearing memo no.G/3267, was issued by the University, by which the petitioner was put under suspension in light of the letter dated 31.07.2017.

9. Further submission is that the petitioner moved this Court



by filing C.W.J.C. No.11573/2018, *inter alia*, with a prayer to quash the notification dated 22.02.2018, bearing Memo No.G/3267, issued by the orders of the Vice Chancellor of the University, by which the petitioner was placed under suspension on the ground that the said action was was contrary to the provisions contained u/s 11(9) of the Patna University Act, 1976.

10. He further submits that during the pendency of the C.W.J.C No.11573 of 2018, in response to the explanation of the petitioner, a letter dated 15.05.2018 was issued by the Dean, Faculty of Sciences & Head, Department of History of the University, who was appointed as the enquiry officer to look into the charges against the petitioner. The petitioner was directed to submit new information or facts other than the previous ones stated by him in his letter dated 30.01.2018 by 22.05.2018, failing which, it was pointed out that it would be presumed that he did not have any new facts to mention.

11. He submits that petitioner, in reply to the aforesaid letter, submitted his reply dated 21.05.2018, stating that the charges levelled against him were false and pointless. Again, an enquiry report dated 24.05.2018 was sent to petitioner with a direction to submit his clarifications in reply to the contents of the said



enquiry report. The petitioner, upon receipt of the enquiry report dated 24.05.2018, submitted his detailed explanations and while explaining the various facts and circumstances of the case, he requested the Authorities to appoint another enquiry officer who shall conduct the enquiry without any biasness.

12. He further submits that notwithstanding the explanations submitted by the petitioner before the concerned Authorities, a notification dated 16.08.2018, bearing memo no.1901/R, was issued by the orders of the Vice Chancellor of the University punishment was inflicted upon the petitioner to the effect that he would not get any promotion during the remaining period of his service under the University and would retire from the post of Associate Professor in the services of the University and it was also stipulated that the petitioner would not be entitled for any payment other than the subsistence allowance paid to him during the period of suspension; and accordingly, the suspension of the petitioner was revoked and he was directed to submit his joining in the Department of Applied Economics and Commerce under the University.

13. Learned counsel for the petitioner further submits that being aggrieved with the said action, the petitioner filed one I.A. No.7596/2018 in C.W.J.C. No.11573 of 2018 with a prayer for



allowing amendment in the connected writ application for quashing of the notification dated 16.08.2018, bearing memo no.1901/R, issued by the orders of the Vice Chancellor of the University by which the punishment had been inflicted upon the petitioner. The said C.W.J.C. No.11573 of 2018 is still pending for adjudication before this Court.

14. He further submits that one complaint bearing No.1/Lol (Education) 26/2016 was been filed before the Lokayukta, Bihar, Patna wherein certain allegations had also been made against the petitioner with respect to his functioning while he was in the capacity of Controller of Examinations under the Maulana Mazharul Haque Arabic and Persian University, Patna and departmental proceedings had also been conducted against the petitioner by the University for the same set of allegations.

15. He further submits that one C.W.J.C. No.17226/2015 had also been filed by the same persons, who were complainants before the Lokayukta in relation to the same charges of corruption, etc. committed in Maulana Mazharul Haque Arabic and Persian University, Patna, which is pending for adjudication before this Court and from the perusal of the case status of C.W.J.C. No.17226/2015, it is apparent that the complainants before the Lokayukta are also the petitioners before this Court



and amongst other persons, the present petitioner has been impleaded as respondent no.7 in the said case.

16. He further submits that the same set of complainants before the Lokayukta, Patna have filed a writ application before this Court and in this regard, it would be relevant to refer to a letter dated 06.04.2016, bearing memo no.889, issued from the office of Lokayukta, Patna. A bare perusal of the said letter it would clearly demonstrate that in view of the pendency of the C.W.J.C. No.17226/2015 before this Court, the aforesaid complaint had not been entertained by the Lokayukta, Patna (Annexure-13).

17. Learned counsel for the petitioner further submits that the office of the Lokayukta, Patna had already informed on earlier occasion that the complaint has been filed by same set of complainants which could not be entertained on account of pendency of the aforesaid C.W.J.C. No.17226/2015. However, notwithstanding the aforesaid order having been passed by the Lokayukta vide letter dated 06.04.2016 on different dates, hearing in relation to the complaints filed by the same complainant are being conducted before the Lokayukta and on the basis of such directions issued by the Lokayukta, departmental proceedings against the petitioner was conducted,



and following which certain punishments have also been inflicted upon him which are subject matter of adjudication in C.W.J.C. No.11573 of 2018 pending before this Court.

18. He further submits that respondent no.6 and 7 who filed complaint before the Lokayukta have also filed C.W.J.C. No.17226 of 2016 relating to the same charges of corruption and as such inquiry is barred in terms of Section 17 of the Bihar Lokayukta Act, 2011.

19. He further submits that an order passed by the Lokayukta, it is held that the matter should not have been treated as lightly as it has been treated by the University while inflicting the order of punishment against the petitioner and it is also held that he ought not to be left with such lenient punishment, which can not be said to be sufficient much less an exemplary punishment.

20. He further submits that the Lokayukta has no power to interfere with the punishment given by the concerned Department. The provisions contained under the Bihar Lokayukta Act 2011 as well as under the Bihar Lokayukta Investigation Rule, 2013, which, *inter alia*, categorically described that the Lokayukta should not proceed with the investigation where the Supreme Court or the High Court issues any direction/order/writ in respect of the matter mentioned in



the complaint under investigation and in view of the fact that on the same ground, on earlier occasion, vide letter dated 06.04.2016, issued by the Lokayukta, Patna, the complaints in question had not been given consideration. Hence, the action being sought to be taken in the present matter against the petitioner is lawfully impermissible.

21. A counter affidavit filed on behalf of the respondent nos.6 and 7 is on record and it is submitted therein that the inquiry was conducted by Hon'ble Mr. Justice Sadanand Mukharjee, a former Judge of this High Court in a fair manner and the said inquiry was conducted in presence of all the officers of the University. He further submits that the respondents and others, who were working on contractual basis, only fought for the natural justice and their allegations have been found true in the inquiry conducted by the Chancellor.

22. Learned counsel for the respondent nos.4 and 5 submits that the present writ petition has been filed against the order passed by the Lokayukta and no relief is claimed against the University. He further submits that petitioner was suspended by the order of the Vice Chancellor under clause 8.1 of the Statute approved by the Chancellor vide Governor's Secretariat Memo No.BSU-25/2014-1359/GS(1) dated 11.09.2014, which provides



that “As per the Act and Statutes, the power conferred under Section 10(11), the Vice Chancellor can suspend any teacher of the University”.

23. He further submits that the Disciplinary Committee resolved to revoke the suspension stating in view of the General Conditions of Service Stature 15 (Disciplinary Action) and in view of Section 15(ii) no promotion shall be granted to the petitioner during the remaining period of service and he will remain on the post of Associate Professor till the date of his superannuation and during the period of suspension, he will be entitled only for subsistence allowance and no other financial benefits will be granted to him.

24. Learned counsel for the State has also filed a counter affidavit stating that the petitioner has challenged his suspension in C.W.J.C. No.11573 of 2018, and the same is pending for adjudication before this Court. She further submits that there are serious allegations levelled against the petitioner and a complaint was also filed against the petitioner before the Lokayukta regarding certain omission and commission committed by him.

25. Having heard learned counsel for the parties, in my considered opinion, Lokayukta has no power to pass an order



stating that the petitioner was awarded a lenient punishment in view of the provisions enshrined in Section 17 of the Bihar Lokayukta Act, 2011 and on the same set of allegation the inquiry is barred in terms of Section 17 of the Lokayukta Act, 2011.

13. In view of the matter, I have no option but to set aside the order dated 19.09.2018 passed in 1/Lok (Education) 26/2016 by the Lokayukta, Bihar.

14. In the result, this writ application is allowed.

(Anjani Kumar Sharan, J)

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CAV DATE	
Uploading Date	
Transmission Date	

