

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5351 of 2020

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Saurabh Choudhary S/o Sri R.K. Choudhary, Resident of 602, Imperial Block, Supertech Estate, Sector-9, Vaishali, I.E. Sahibabad, P.O.-Vasundhra, P.S.-Ramprastha, Ghaziabad, Uttar Pradesh.

... .. Petitioner/s

Versus

1. Nalanda University through its Registrar, Rajgir, District Nalanda, Bihar-803116, India.
2. The Chancellor, Nalanda University, 2nd Floor, Council for Social Development Building 53, Lodhi Estate, New Delhi-110003.
3. The Vice Chancellor, Nalanda University, P.S. Rajgir, District-Nalanda-803116.
4. The Registrar, Nalanda University, P.S. Rajgir, District-Nalanda-803116.
5. Prof. Sunaina Singh, Nalanda University, P.S. Rajgir, District-Nalanda-803116.
6. The Union of India Ministry of External Affairs through its Secretary, having its headquarters at E Block, Central Secretariat, New Delhi-110001.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arup Kumar Chaudhary, Adv
For the Respondent/s : Mr. Anjani Kumar, Sr. Adv

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV

Date : 14-08-2024

Heard learned counsels for the parties.

2. The present writ application has been filed on behalf of the petitioner for the following reliefs:-

(i) For issuance of writ, order or direction quashing and setting aside the order bearing No.NU/48/2014-15/967 dated 27.02.2018 issued under the signature of the Registrar, Nalanda University (hereinafter referred to as “the University”) modifying the contract of the petitioner to his disadvantage by shortening the extension grant to the petitioner for three years on 17.08.2017 to one year i.e. up to 04.08.2018.

(ii) For issuance of a direction quashing and setting aside the



order bearing no.NU/48/2014-15/1231 dated 04.06.2018 issued under the signature of the Registrar, Nalanda University (Respondent No.4) whereby the services of the petitioner has been terminated forthwith by putting an end to his service contract.

(iii) For a direction commanding the respondents to reinstate the petitioner in service to his post of Manager-Admissions for the full period of three years in accordance with the order of extension of contract dated 17.08.2017 with full back-wages and all consequential benefits by treating the petitioner to be in service during the intervening period between 04.06.2018 and the date of reinstatement.

(iv) For a direction commanding the respondents to pay the petitioner increment for the year 2017 (July 2017), enhanced Dearness Allowance from January, 2018 and unutilized Earned leave for 144 days with 12% interest per annum from the date they became due and payable till the date of actual payment since the petitioner is legally entitled to the said benefits which have been deliberately and intentionally not paid by the Respondents.

(v) For a direction to the respondents to pay the petitioner the amount of Rs.1,00,222/- which has been illegally withheld by the respondents without any cogent reason or explanation, that is the difference of claimed amount of Rs.6,48,982/- minus Rs.5,48,760/- which has actually been paid to the petitioner.

(vi) For any other relief for which the petitioner is found entitled to be in accordance with law.

The Nalanda University Act, 2010 (hereinafter referred to as “the Act”) - “This is an act to implement the decisions arrived at the Second East Asia Summit held on the 15th January, 2007 at Philippines and subsequently at the Fourth East Asia Summit held on 25th October, 2009 at Thailand for the



establishment of the Nalanda University in the State of Bihar as an international institution for pursuit of intellectual, philosophical, historical and spiritual studies and for matters connected therewith or incidental thereto”.

3. The case at length is that, in response to an Advertisement issued by the University for appointment against various posts, petitioner applied for the post of Manager-Admissions at the Respondent University and was offered an interview for the post of Manager-Admissions at the University through Letter No.NU/48/2014-15/388 dated 17.07.2014. Pursuant to the interview and selection process, petitioner was offered the said post through letter No.NU/48/2014-15/408 dated 28.07.2014 for an initial appointment period of three years. He was also given an engagement order after his joining vide Office Order No.NU/49/2014-15/99 dated 20.08.2014.

4. The petitioner joined the University as Manager-Admissions on 05.08.2014 but he was not provided with the copy of his employment contract that led to violation of Section 33 of the Act. Subsequently, the service of the petitioner was confirmed w.e.f. 05.08.2015 vide an order bearing No.NU/Admin/116/1080 dated 23.11.2015 issued by the University (Annexure-P-5 (Colly) of the writ petition).



5. Petitioner's performance was rewarded on 17.08.2017 by the extension of his contract of employment for a period of three years w.e.f. 05.08.2017 to 04.08.2020 based on Performance Assessment Report for the year 2014-17.

6. Learned counsel for the petitioner further submitted that the Vice Chancellor and the Registrar in the late 2017 started targeting, humiliating and disrespecting the petitioner openly in meetings and purposefully treating him with disdain. Later, the respondents expressly trump some charges against the petitioner in Memo No.NU/48/2014-15/2018/864 dated 19.01.2018 specifying that the petitioner had not initiated sincere efforts and failed to meet the expectation of the University in performing the important assignment and petitioner was said to file a reply against the same as to "why stringent disciplinary action should not be initiated against him"(Annexure-P-8). In response, petitioner submitted his reply through an email dated 27.01.2018 (Annexure-P-9).

7. He further submitted that the respondent issued an Order No.NU/48/2014-15/967 dated 27.02.2018, in which the term of appointment of petitioner was modified for a renewed period of one year only i.e. for the period up to 04.08.2018. Subsequently, on 19.03.2018, petitioner was made to sign the employment



contract at the instance of respondent no.5.

8. He further submitted that on 17.05.2018, petitioner received memo no.NU/48/2014-15/236 regarding compliance with FRRO requirements wherein the respondent alleged that the FRRO, Patna, had not received an updated database of international students and directed the petitioner to explain the reason for the same (Annexure-P/10). Subsequently, he responded vide letter dated 21.05.2018 to the Respondent University (Annexure-P-11).

9. On 04.06.2018, the University vide letter no.NU/48/2014-15/1231 intimated the petitioner about the “termination of his employment contract on 04.08.2018” due to complicity of the work and working against the interest of the University (Annexure-P-1).

10. He further submitted that petitioner was appointed as Manager Admission for a full time employment, subject to the provisions for a period of three years between 05.08.2014 to 04.08.2017. A Stamp paper was prepared in the year 2014 but signature of the petitioner was taken in the year 2018. As per the content, the stamp paper was produced in the year 2014 and signature of petitioner was taken in the year 2018, therefore, there is illegality and irregularity in the stamp paper produced



by the respondent university (Annexure-P-5).

11. He further submitted that in the bottom right side of the stamp paper itself it is clearly written that “Contract has been extended till 04.08.2018”.

12. He further submitted that petitioner claimed Rs.6,48,982/- towards his arrears of salary increment from July 2017, difference of DA from January 2018. However, the University paid only Rs.5,48,760/- to the petitioner and Rs.1,00,222/- is still left to credit to the petitioner. (Annexure-P/12)

13. Petitioner was also not issued experience certificate and the salary amount due to him by the University, being aggrieved, the petitioner on 20.06.2018 and 08.07.2018 wrote letter to the Chancellor and the Governing Board of the Respondent University accompanied by testimony of the unfair and harsh condition of employment faced by him and a narration of the illegal actions taken by the Respondent University and praying for their intervention in the matter of his illegal termination but no satisfactory reply was given to the petitioner. It is well established by law, rules and regulations that provide an Authority to initiate a disciplinary proceedings against an employee of the University. The University has violated all the applicable rules and regulations well established



under law by not conducting any disciplinary proceedings against the petitioner.

14. It is submitted that it is no more *res-integra* that even when the employment of a government employee is contractual and for a fixed period, the same cannot be terminated based on prejudicial findings attaching stigma and when such termination is penal, the same is bad in law if the procedure prescribed under Article 311(2) is not followed, In this regard, it is submitted that the Hon'ble Apex Court in catena of cases has held that if the termination order is hit by stigma even in the case of contractual or tenure employee, provisions of Article 311(2) is to be followed.

15. Vide the impugned order dated 04.06.2018, the services of the Petitioner under the contract has been illegally terminated without giving any opportunity of hearing to the Petitioner and thereby giving a complete go by to the Principles of Natural Justice. Further, the said order is illegal, arbitrary and cannot be sustained in the eyes of law in as much as the same has been passed in complete violation of and *de hors* the terms and conditions of the employment contract read with the Nalanda University Act, 2010 and Statutes made there under.

16. That it is further submitted that the impugned order dated



04.06.2018 is not a Termination Simplicitor and attaches stigma to the Petitioner in as much as the termination letter itself mentions that “The Competent Authority has decided not to extend your term further due to complicity of the work and working against the interest of the University (Ref: Irregularity and deficit in student fee collection; Problematic hostel management; Mismanagement of fellowship; Foreign Student Affairs: serious complaint received from FRRO etc.)” As such, the Petitioner’s services could not have been terminated by putting an end to the contract (the termination not being Simplicitor) without following the due procedure as prescribed in the contract read with the Nalanda University Act, 2010 and the Statutes made there under. Therefore the termination is bad without any authority of law, in complete violation of the fundamental rights of the Petitioner guaranteed under Article 14, 16, 21 of the Constitution of India as well as Article 311(2) of the constitution of India and as such is liable to be quashed and set aside.

17. It is submitted that there has been a breach of the principles of natural justice applicable to all disciplinary proceedings by the Respondents and its dealings with the Petitioner regarding not only termination order dated



04.06.2018 but also the previous issues raised in the Memo dated 19.01.2018, and the order dated 27.02.2018, and the Memo dated 17.05.2018.

18. It is further submitted that clause 5 of the petitioner's employment contract suggests that in the event of violation of any terms of the agreement by the employee, the agreement shall be liable to be terminated "pursuant to disciplinary actions by the University against the Employee". Present is a case where the impugned termination order is passed without such disciplinary actions as referred above. Further the order does not even whisper as to which term and condition of the contract the petitioner has violated.

19. Clause 5.1 of the petitioner's employment contract further suggest that where there is an allegation of misconduct against an employee, the Vice Chancellor may, by an order in writing, place the employee under suspension. Termination as the case may be and shall forthwith report to Governing Board by circulating the circumstances under which the order was made. Provided that the Governing Board/Exco may, if it of the opinion that the circumstances of the case do not amount to misconduct on the part of the employee, revoke that order and a decision in the said respect must be taken within a period of



three months from the date of issuance of the order of suspension. Further, he submitted that the Governing Body is mandated under this clause to take a decision on the matter as to whether the employee is guilty of misconduct or not within three months from the date of issuance of the order of suspension/ termination, which is also missing in the case of the petitioner.

20. That Clause 5.2 of the employment contract further provides that “notwithstanding anything contained in this agreement the Governing Board/ Exco shall be entitled to remove an employee from services of the University on the ground of misconduct or for indulging in activities that are unlawful and prohibited under the law of land”. There is nothing on record to show that the order terminating the services under contract was passed invoking this particular clause.

21. He further submitted that all efforts of the petitioner fell in vain, the petitioner, being aggrieved was constrained to prefer a writ petition being W.P. (C) No. 8155/2018 dated 25.07.2018 before the Delhi High Court with a *bona fide* belief that the said court has the requisite jurisdiction inasmuch as the Respondent University maintains a major office/centre in New Delhi and the appointment letter issued to the petitioner at New Delhi.



22. Petitioner filed writ petition against the action of the University and for the payment of dues in Delhi High Court. Due to intervention and interim direction of the Delhi High court, University paid Rs.5,48,760/- to the petitioner against his claim of Rs.6,48,982/- thus paying a less amount of Rs.1,00,222/- for which no explanation was given. Though, a part of the payment was made pursuant to the writ petition filed in the Delhi High Court, but the same was dismissed on the ground of lack of territorial jurisdiction.

23. It is further submitted that a cost of Rs. 20000/- was imposed upon the petitioner to deposit the same in Delhi High Court Advocates' Welfare Fund within a period of four weeks on the ground that the petitioner filed writ petition in the Delhi High court with the same prayer on same grounds as prayed in the present writ petition.

24. It is further submitted that even a quasi-judicial proceeding must be conducted in accordance with the principles of natural justice and in a fair, reasonable and transparent manner and this has been firmly held by all Courts of the country. In *A.K. Kraipak and Ors. V. Union of India and Ors.* [1970] 1 SCR 457 the Supreme Court held that the rule that an inquiry must be held in good faith and without bias and not



arbitrarily or unreasonably is now included among the principles of natural justice. He further relied upon the judgment passed by the Supreme Court in ***Mohinder Singh Gill v. Chief Election Commissioner (1978) 1 SCC 405***, a five judge Bench of the Supreme Court observed that the law laid down in ***A.K. Kraipak*** was of the nature of a watershed moment obliterating the line between administrative and quasi-judicial functions with regard to the need for compliance with the principles of natural justice.

25. A counter affidavit is filed on behalf of the respondent nos.2 to 5. In para-7 of the counter affidavit, it is stated that the respondent has handed over the experience certificate to the petitioner in compliance with the order dated 30.09.2019 of the High Court of Delhi in WP(C) No.8155 of 2018. Also whatever undisputed dues were payable by the University have already been remitted to the petitioner.

26. Learned Senior Counsel for the respondent submitted that as per Section 15(2) of the Act – “The Vice Chancellor shall be the principal academic and executive officer of the University and shall exercise supervision and control over the affairs of the University and give effects to the decisions of all the authorities of the University.” Therefore, petitioner cannot take the name of the person serving as the Vice Chancellor as a separate



respondent, and the claim by the petitioner that the Vice Chancellor has acted out of any personal bias is entirely wrong and baseless.

27. Learned Senior Counsel further submitted that the University issued an order Vide No.- NU/48/2014-15/1231 dated 04.06.2018 to the petitioner on non-extension of his contract (Not Terminated) as he claims. This order was merely an advance intimation to the petitioner on the non-continuation of his employment contract beyond 04.08.2018.

28. He further submitted that the petitioner failed in performing his primary duty and was given multiple opportunities to rectify his conduct, and even served with Memos Vide No.NU/48/2014-15/2018/864 and Memo Vide No. - NU/48/2014-15/236 dated 19.01.2018 and 17.05.2018, respectively, whose replies thereof were submitted by the petitioner to the Respondent accordingly, and based on that, the Respondent made modifications in the Petitioner's employment contract.

29. The University acted against the petitioner to avoid any further damage to the international reputation of the University or jeopardizing any admission process for the year 2018-19, so the University issued an order Vide No.NU/48/2014-15/1231



dated 04.06.2018 to the petitioner on his non-extension of the employment contract, which is not a case of termination as claimed by the petitioner.

30. Learned Senior Counsel further submitted that petitioner was assigned a duty in September 2017 (3 months in advance to the 4th Dharma-Dhamma International Conference at Nalanda University) to book accommodation for the dignitaries and speaker of the said conference. However, the petitioner failed to perform this task.

31. It is further submitted that petitioner even failed in his primary duty of managing the admission process from batch 2014 to subsequent batches until 2017 as he was the Manager of Admission. He had not even submitted the updated database of International Students and had not even completed the registration process of International Students as a result of which the students were put to a lot of difficulties and fined due to lack of negligence on the part of the petitioner.

32. He relied upon Section 33 of the Act, which states that:-

(i) 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.

(ii) Any dispute arising out of the contract between the University and any employee shall, at the request of the



employee, be referred to a Tribunal of Arbitration consisting of one member appointed by the Governing Board, one member nominated by the employee concerned and an umpire appointed by the Visitor.

(iii) The decision of the Tribunal shall be final and no suit shall lie in any civil court in respect of the matters decided by the Tribunal.

(iv) Every request made by an employee under sub-section (2) shall be deemed to be a submission to arbitration upon the terms of this Section within the meaning of the Arbitration and Conciliation Act, 1996.

(v) The procedure for regulating the work of the Tribunal shall be prescribed by the Statutes.

33. He further submitted that according to the Section 33(ii) of the Act, any dispute arising out of the contract between the University and any employee shall, at the request of the employee, be referred to a Tribunal of Arbitration consisting of one member appointed by the Governing Board, one member nominated by the employee concerned and an umpire appointed by the Visitor. Therefore, the writ application is not maintainable. If the service of the petitioner was reduced then he should have filed an application before Tribunal of Arbitration.

34. I have heard the parties at length. It is an admitted fact that the petitioner was appointed on a contract basis for a period of three years i.e. 05.08.2014 to 04.08.2017 which was extended



by the University for another three years i.e. from 05.08.2017 to 04.08.2020 but without any prior notice, the service of the petitioner was reduced to two years by mentioning that the contract will come to an end by 04.08.2018 itself.

35. Considering the facts and circumstances of the case and without making any opinion on merits of the case, petitioner is directed to filed a detailed application enclosing relevant documents, before the “Tribunal of Arbitration” as mentioned in the Section 33(ii) of the Act. Further, the concerned respondent is also directed to appoint requisite arbitrators in accordance with the Section 33(ii) of the said Act, and the “Tribunal of Arbitration” must act according to the procedure prescribed by the Statutes of the University.

36. With the aforesaid direction, this writ application stands disposed of.

(Anjani Kumar Sharan, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	01.07.2024
Uploading Date	14.08.2024
Transmission Date	NA

