

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4478 of 2024

Charanjit Kumar son of Sri Arun Kumar, Resident of Mohalla- Yogipur, P.S.-
Patrakarnagar, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Human Resources, Government of Bihar, Patna.
2. The Honble Chancellor, Rajbhawan, Patna through, through OSD, Judicial.
3. Nalanda Open University, through its Registrar, Nalanda, Biharsharif.
4. Registrar, Nalanda Open University, Nalanda, Biharsharif.
5. Vice Chancellor, Nalanda Open University, Nalanda, Biharsharif.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. Priyank Deepak, Advocate
For the State	:	Mr. Kinkar Kumar, SC-9
For the Chancellor	:	Mr. Janardan Pd. Singh, Sr. Advocate Mr. Rajiv Ranjan Kr. Pandey, Advocate
For the University	:	Dr. Anand Kumar, Advocate Mr. Rajan Prakash, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 28-10-2024

Heard learned counsels for the parties.

2. This writ application has been filed for the following
following relief/s:-

“(i) For quashing of order dated 09.05.2023 passed in NOU (H.C.)-05/2020 (Charanjit Kumar Vs. the State of Bihar & Others) passed by the Hon'ble Chancellor, by which despite observing that there was illegality in the inquiry, upheld the impugned order of dismissal from service of the petitioner dated 02.09.2015 by dismissing the memo of appeal which was communicated to the petitioner by OSD(Judicial) vide letter No.1251 dated 09.08.2023 but not served upon the petitioner. Subsequently, communicated to the petitioner vide



letter No.189 dated 29.01.2024 by the OSD(Judicial).

- (ii) For quashing of Officer Order bearing Letter No.722 dated 02.09.2015 passed by Registrar (Examination), Nalanda Open University by which petitioner is dismissed from service in a departmental proceeding.*
- (iii) For quashing of enquiry report dated 28.04.2016 of Registrar, CNLU-cum- Conducting Officer by which charges leveled against the petitioner stands fully proved illegally.*
- (iv) For holding and declaring that based upon illegal enquiry report, order of punishment dated 02.09.2015 and appellate orders dated 09.05.2023 have been passed which are also illegal and not sustainable in the eye of law and are liable to be set aside by his Hon'ble Court.*
- (v) For a direction to the respondents to reinstate the petitioner on the post held by him with all consequential benefits including back wages.*
- (vi) For any other relief/relieves to which the petitioner may be found entitled to, be granted to the petitioner."*

3. Learned counsel appearing on behalf of the petitioner has questioned the legality and validity of the impugned orders on the ground that the enquiry was conducted contrary to the rules. It is submitted that during enquiry, list of prosecution witnesses and prosecution evidences along with articles of charge was never served upon the petitioner, which is in complete violation of the principles of natural justice as well as in violation of Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. It is further submitted that as a matter of fact, the departmental proceeding



was conducted in absence of presenting officer and on this ground alone, the entire departmental proceeding vitiates. It is lastly submitted that the aforesaid fact has also been affirmed and admitted by the appellate authority in its order dated 09.05.2023 wherein the Hon'ble Chancellor has observed that "*there was illegality in the enquiry*".

4. In this case, a counter-affidavit has been filed on behalf of Respondent No. 1. However, in the entire counter-affidavit, the respondents have not controverted the contentions made on behalf of the petitioner.

5. This Court is of the view that in terms of Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, the respondent-Authorities were obliged to supply list of prosecution witnesses and prosecution evidences along with article of charges upon the petitioner.

6. It is not in dispute that in the present case, the departmental proceeding was conducted in absence of presenting officer. Contentions made by the petitioner also finds support in the order passed by the appellate authority wherein the appellate authority has also held that there was illegality in the enquiry.

7. Absence of presenting officer vitiates the entire



enquiry proceedings. On this ground alone, the enquiry report, order of punishment and subsequent order of appeal are fit to be quashed and set aside. In this connection, reliance can be placed upon judgment of the Hon'ble Apex Court in the case of ***Union of India and Others versus Ram Lakhan Sharma*** reported in ***(2018) 7 SCC 670***.

8. In view of the foregoing discussion, this Court hereby quashes and sets aside the order of punishment bearing Letter No. 722 dated 02.09.2015 passed by the Registrar (Examination) Nalanda Open University (Respondent No. 4) (Annexure-P/2 to this writ application), enquiry report dated 28.04.2016 of the Registrar, C.N.L.U.-cum-Conducting Officer (Annexure-P/3 to this writ application) and order of Hon'ble Chancellor passed in NOU (H.C.)-05/2020 dated 09.05.2023 (Annexure-P/1 to this writ application).

9. Since the enquiry report, order of punishment and order passed in appeal preferred by the petitioner have been quashed and set aside on technical grounds, the matter is remitted back to the Registrar, Nalanda Open University, Nalanda, Bihar Sharif (Respondent No. 4) to initiate fresh proceedings within a period of six weeks from the date of receipt/production of a copy of this order.

10. In case such proceeding is initiated within the



stipulated period, the same shall be concluded and disposed of, in accordance with law, after affording due opportunity of hearing to all the concerned parties, by a reasoned and speaking order, preferably within a period of six months thereafter.

11. With the aforesaid observations and directions, this writ application is disposed of.

(Prabhat Kumar Singh, J)

shashank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.10.2024
Transmission Date	NA

