

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5815 of 2023

Niraj Kumar Thakur, Son of Deo Nath Thakur, Resident of Village-
Mangrauni North, P.S.- Rajnagar, District- Madhubani.

... .. Petitioner/s

Versus

1. The Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga through its Registrar.
2. The Vice Chancellor, The Lalit Narayan Mithila University, Kameshwar Nagar, P.S.- L.N.M.U. Campus, District- Darbhanga.
3. The Registrar, The Lalit Narayan Mithila University, Kameshwar Nagar, P.S.- L.N.M.U. Campus, District- Darbhanga. (hereinafter referred as L.N.M.U., Darbhanga)
4. The Finance Officer, The Lalit Narayan Mithila University, Kameshwar Nagar, P.S.- L.N.M.U. Campus, District- Darbhanga.
5. The Office Superintendent, (Appointment Cell), L.N.M.U., Darbhanga.
6. The Director, Sampurna Enterprises, 8 Commercial Building (1st Floor), North- West Corner of S.K. Puri Children Park, Boring Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kripa Nand Jha, Advocate.

For the LNMU : Mr. Bindhyachal Rai, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 14-11-2024

Heard Mr. Kripa Nand Jha, learned counsel appearing on behalf of the petitioner and Mr. Bindhyachal Rai, learned counsel appearing on behalf of the Lalit Narayan Mithila University.

2. The petitioner in paragraph no. 1 of the present writ



petition has sought, inter alia, following relief(s), which is reproduced hereinafter:-

“(i) For issuance of an appropriate direction, order or writ in the nature of certiorari quashing the order as contained in Memo No. LNMU/CR/105/2022 dated 13.05.2022 by which the service of the petitioner has been dispensed with on fictitious ground whereas the service of other person appointed alongwith the petitioner has been retained in the University service.

(ii) For further issuance of an appropriate direction, order or writ in the nature of mandamus commanding the respondent university to restore the service of the petitioner keeping in view that the other persons appointed alongwith the petitioner have been allowed to continue in service and only the service of the petitioner has been dispensed with.

(iii) For any other relief/ reliefs to which the petitioner may be found entitled to, in the facts and circumstances of the case.”

3. Brief facts of the case are that the petitioner was working on the post of computer operator under L.N Mithila University, Darbhanga on contractual basis as per the terms and conditions contained in notification issued by the Registrar vide Memo No.- VCR- 6489-99/09 dated 22.05.2009 (Annexure-1). The contract was for six months and he was posted in the Account Section. The petitioner had joined on 23.05.2009 and started discharging his duty in the University from the said date. The services of the petitioner was continued in terms of order dated 12.11.2010 contained in Memo No.- SC-528/10, entered with the professional service provider, namely, Sampurna Enterprises. In the meantime, on 11.11.2011, the university again appointed 22 computer operators for different section of



the university on contractual basis. Thereafter, the Registrar of the University issued a Memo No.- LNMU/CR/105/22/C dated 13.05.2022 addressed to Mr. Rakesh Prakash, Director-Sampurna Enterprises, by which the service of the petitioner has been dispensed with and a copy was also served to the petitioner (Annexure-6). The petitioner filed his representation before the Vice- Chancellor of the university on 16.06.2022 (Annexure- 7) requesting to cancel the order dated 13.05.2022 and allow him to continue in the University service, but no action has been taken till date. Aggrieved by the same, the petitioner filed the present writ petition.

SUBMISSION ON BEHALF OF THE PARTIES

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is aggrieved by the letter dated 13.05.2022 (Annexure-6) which was communicated to Mr. Rakesh Prakash, Director, Sampurna Enterprises, Patna by the Registrar, Lalit Narayan Mithila University informing the said Director, Sampurna Enterprises that the services of the petitioner is being returned back and his services is no more required to be continued. The petitioner is aggrieved in view of the fact that Service Rules of the Lalit Narayan Mithila University has been made applicable in the case of the



employees provided by the service providers. Before returning / terminating the service of the petitioner to the service provider, the remarks made against the petitioner is punitive which will affect the services of the petitioner in his future employment.

5. Learned counsel submitted that law is well settled even in the case of contract employee, if the order is punitive in nature, the same calls for interference in accordance with mandate of Article 311(2) of the Constitution of India. In this background, the petitioner seeks to withdraw the present writ petition with liberty to pursue remedy before the Vice Chancellor, Lalit Narayan Mithila University for the relief as prayed for in the present writ petition and also in view of the fact that petitioner has already represented before the Vice Chancellor on 16.06.2022 which is still pending and the same is required to be disposed of.

6. *Per Contra*, Learned Counsel on behalf of the respondent submitted that the petitioner was working in the University as an outsource employee through an Outsourcing Agency/ Company namely Sampurna Enterprises. As per the agreement with the company and the service condition of the employees, petitioner has to follow the norms of the university laws, however, the petitioner was found working against the



university laws and not following the order of the competent authority and as such the university decided not to continue with the service of the petitioner and hence he was returned back to the outsource agency.

ANALYSIS AND CONCLUSION

7. Heard the parties.

8. The petitioner was appointed on contractual basis under the Signature of Registrar, Lalit Narayan Mithila University vide order dated 22.05.2009 (Annexure-1) entered with the service provider. It is stipulated in the said notification that the petitioner will have to abide by the Service Rules of the Lalit Narayan Mithila University, Darbhanga. At the same time, it has been informed in the said notification that the contractual appointment of the petitioner shall be terminated without any prior notice, if the performance is found below the requirements.

9. The petitioner has not brought on record any paper relating to the contract entered between the service provider, Sampurna Enterprises and Lalit Narayan Mithila University. I find that in such circumstances, this Court cannot interfere in any manner to decide the disputed question. However, the question arises whether the contract can be held applicable to



the petitioner? And whether the punitive remarks and direction to the service provider to terminate the service of the petitioner will affect the future employment of the petitioner calling for interference at this stage?

10. Before I proceed to deal with the objection raised by the petitioner that he is the one who is effected by the adverse punitive remark of the University suggesting the service provider to terminate his service, a notice was required to be given by the Registrar of the University to the petitioner in accordance with the service Rules of the University which has been applicable in the case of the petitioner, but the fact which emerges is that the direction given to the service provider by the university can only be called punitive, affecting the future employment of the petitioner. Such insinuating remarks made against the petitioner is punitive having been passed behind his back. It is settled principle of law that without giving him any opportunity of hearing to explain his innocence or without holding inquiry in accordance with the mandate of Article 311(2) of the Constitution of India in the light of several decisions of the Apex Court as laid down in the case of ***P.L. Dhingra vs. Union of India*** reported in ***AIR 1958 SC 36***, ***Brij Mohan Lal Vs. Union of India*** reported in ***(2012)6 SCC 502***,



Central Inland Water Transport Corporation Limited Vs. Brojo Nath Ganguly reported in ***AIR 1986 SC 1571*** including recent judgment of the Apex Court in case of ***Swati Priyadarshini vs. the State of Madhya Pradesh & Ors. (Civil Appeal No.9758 of 2024 arising out of Special Leave Petition (C) No.11685 of 2021)***, wherein the Hon'ble Supreme court has held that even in the case of contractual employee before the order which is punitive in nature is passed, the minimum requirement is to provide opportunity of hearing after holding the inquiry and giving reason for the same. Further, the Apex Court by relying upon the above-mentioned judgments in the case of ***Swati Priyadarshini (supra)***, has held that the termination orders being stigmatic in nature, relating to alleged misconduct involving moral turpitude, the same could not have been passed without holding a regular inquiry and the termination order could not have been passed without giving an opportunity of being heard. The present facts and circumstances of the case also establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been passed without abiding the provision of Article 311. I find it gainful to *inter alia*, reproduce paragraphs no. 35 and 36 of the judgment of ***Swati Priyadarshini (supra)***.

"35. We would only be adding to verbosity by



multiplying authorities. In view of the above dictum, it is clear that the Respondents did not comply with Clause 4 – either the first part or the second part thereof. The order dated 30.03.2013 does visit the appellant with evil consequences and would create hurdles for her re further employment.

36. In view of the discussions made hereinabove, the Impugned Judgment is quashed and set aside. The judgment of the learned Single Judge dated 20.06.2017 stands revived, however with a modification to the extent that the appellant shall be entitled to all consequential benefits including notional continuation in service at par with other similarly- situated employees, but with the back wages restricted to 50%. Further, in view of the long passage of time, we deny liberty to the respondents to proceed afresh against the appellant as was granted by the learned Single Judge. However, this will not preclude the respondents from taking action against the appellant in accordance with law in futuro apropos her official duties on the post in question, if the situation so arises. The exercise be completed within three months from the date of receipt of this judgment.

11. As regards to the objection raised on behalf of the respondent that there exists no Master and Servant relationship between the petitioner and the University, which finds support from the fact that the contract with the service provider and the university cannot be interfered by this court in exercise of its power under Article 226 of the Constitution of India. The law in this regard is well settled by the Hon'ble Apex Court in the case of **Dena Nath and others Vs. National Fertilizers Ltd. and others**, reported in **1992 AIR 457** in para 22 in respect of the said preposition has held, *inter alia*, as



follows:

“22. It is not for the High Court to inquire into the question and decide whether the employment of contract labour in any process, operation or in any other work in any establishment should be abolished or not. It is a matter for the decision of the government after considering the matter, as required to be considered under Section 10 of the Act. The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act. We are thus of the firm view that in proceedings under Article 226 of the Constitution merely because contractor or the employer had violated any provision of the Act or the rules, the Court could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. We would not like to express any view on the decision of the Karnataka High Court or of the Gujarat High Court (supra) since these decisions are under challenge in this Court, but we would place on record that we do not agree with the aforequoted observations of the Madras High Court about the effect of non-registration of the principal employer or the non-licensing of the labour contractor nor with the view of Bombay High Court in the aforesaid case. We are of the view that the decisions of the Kerala High Court and Delhi High Court are correct and we approve the same.” In the light of the above, petitioners cannot be granted any benefit in the present writ petition as none of the grounds pressed into service by the petitioners carry any weight. The writ petitions being devoid of merit stands dismissed.” (emphasis supplied)

12. Further, the Hon'ble Apex Court in the case of **St. Mary's Education Society vs. Rajendra Prasad Bhargava**, reported in **(2023) 4 SCC 498**, has held as under:

“An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. Individual wrongs or breach of mutual contracts without having any public element cannot be



rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service."

emphasis supplied

13. From the letter dated 13.05.2022 communicated to the Sampurna Enterprises (Annexure-6), it cannot be said that the remark suggesting the termination of the petitioner cannot be said to be simplicitor and calls for interference of this Court. The respondent Board comes within the ambit of Article 12 of the Constitution of India. In view of observation/exception laid down in **St. Mary Education Society (supra)**, a writ of certiorari/mandamus can be issued even against a private authority/ body /entity, however, such private authority/ body/ entity must be discharging a 'public function' involving 'public law element' and the act complained/under challenge must be having direct nexus with discharge of public duty and individual wrongs or breach of mutual contracts without having any public element as integral part cannot be rectified through a writ petition under Article 226 of the Constitution of India.

14. In views of the discussion made herein above, the



petitioner may pursue remedy before the Vice Chancellor, Lalit Narayan Mithila University. It is also left open to the Chancellor to correct the remarks in respect of the petitioner in view of the discussion made herein above without being prejudiced in any manner by the observation made in the Memo No. LNMU/CR/105/2022 dated 13.05.2022.

- 15. The writ petition stands dismissed as withdrawn.
- 16. There shall be no order as to costs.

(Purnendu Singh, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	02.12.2024
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