

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15657 of 2019

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Pankaj Kumar Chaudhary, Son of Shiv Shankar Prasad Chaudhary, resident of
Village- Nahalu Chak, Police Station- Gondapur Nawada, District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, New Secretariate Bihar, Patna.
3. The Deputy Secretary to Government of Bihar, Health Department, Government of Bihar, Patna.
4. The Director-in-Chief (Disease Control) Health Services, Bihar, Patna.
5. The Head of the Department (H.O.D.)-cum-Controlling Officer, Bihar College of Physiotherapy and Occupational Therapy, Patna Medical College Hospital (PMCH) Campus, Viklang Bhawan Hospital, Kankarbagh, Patna, Bihar.
6. Aryabhatta Knowledge University Mithapur Farm Area, Mithapur Patna, Bihar 800001.
7. The Registrar, Bihar Health Science University Campus, Arya Bhatta K. University, Mithapur farm Area, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pranav, Adv.
For the State	:	Mr.Mujtabaul Haque (GP12) Mr.Manish Kumar, AC to GP 12
For the A.K.U.	:	Mr.Anand Kumar Ojha, Adv.
For the Resp. No.7	:	Mr.Vishwaroop Jha, Adv. Mr.Manoj Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 19-09-2024

Re:- I.A. No.1/2023

The present Interlocutory application has been filed on behalf of the petitioner in compliance of the order passed by the co-ordinate Bench on 09.10.2023, by which, the petitioner was granted time to challenge the impugned order of termination of



admission and cancellation of nomination from the Bihar College of Physiotherapy and Occupational Theraphy, Patna, contained in letter no.261/19 dated 06.05.2019 (Annexure-P/1 to the Interlocutory application).

2. In view of the statements made, I.A. No.1/2023 is allowed and disposed of. Accordingly, the impugned letter no.261/19 is now under consideration before this Court.

Re:- CWJC No.15657 of 2019

Heard learned counsel for the petitioner and learned counsel for the respondents.

3. The present writ application has been filed for issuance of direction upon the respondents to restore the nomination of the petitioner in the college who was unlawfully removed from the college and restrained to appear in First B. Ph. T. and B.Th.O. Practical examination proposed to be held on 10.05.2019 by quashing impugned letter no.261 dated 06.05.2019 (Annexure-8) and letter no.266/19 dated 08.05.2019 (Annexure-10) by which the respondent no.5 has arbitrarily and without jurisdiction removed him from the Hostel and cancelled his nomination from the college and has attempted to spoil his academic career and the respondents be further directed to permit the petitioner in appearing in the Practical examination



(Anatomy) scheduled to be held in the next session.

4. The short fact in the present case is that the petitioner was a student of Bihar College of Physiotherapy and Occupational Therapy, selected and admitted in the college on 22.09.2011 for three years course of Sessions 2011-12, 2012-13 and 2013-15, copy of admission receipts is annexed at Annexure- 1 series to the writ petition.

5. To facilitate the academic career and for the welfare of mass students of the college, the Head of the Department and Controlling Officer of the College by letter No.459/15 dated 30.12.2015 requested the Deputy Secretary, Health Department, Government of Bihar to attach this college permanently with Aryabhatta Gyan University, Patna to complete the session of B.Ph.T. and B.Th.O. courses in time because the present arrangement of examination conducted by the Patna University, takes extra 3 to 4 years in completing the courses which ultimately affects the academic future of the students of this college and the similar grievance was also raised earlier by the concerned students but for no avail (Annexure-2).

6. The petitioner was a student of sessions 2011- 12, 2012- 13 and 2013-14 and due to abnormal delay in conducting examination by Patna University, the 1st year examination of



2011 was conducted in 2014 but the petitioner was unlawfully restrained to appear in the examination, when the college has already taken college- fees for all the three years i.e., 2011 to 2015 and selective policy has been adopted by the college Administration accordingly. Under such view of the matter and being highly prejudiced towards academic career, there is no denial that the petitioner had approached before Mr. Kishore Kumar, the respondent No.5 on 10.10.2017 and had submitted his written grievance and complaint about hostile treatment with the petitioner. He also requested to grant 5 marks as grace in cross papers like similarly other students have been allowed and declared pass.

7. That it is stated that H.O.D.-cum-Controlling Officer, respondent No.5 became deep angry upon his request submitted on 10.10.2017 and in response there to, issued a show cause explanation by letter No.699/17 dated 20.10.2017 addressed to petitioner with 7 charges of allegations along with two frivolous complaint petitions from a Priyadarshni (peon) and Ravi Kumar (sweeper) against the petitioner obtained by the respondent no.5 to put the morale of the petitioner down before the college students (copy of show cause and complaint petitions are enclosed at Annexure-3 series of the writ petition).



8. The petitioner got surprised to receive the letter no.699/17 dated 20.10.2017 as the letter contained fake allegations against him. However, he submitted his show-cause with true material facts contained in para-1 to 7 of the letter dated 02.11.2017 and made the respondent no.5 aware of the fact that the entire allegation is false and fabricated and as such, liable to be enquired by Higher Authority (Annexure-4).

9. One Md. Shoukat Raja (Hostel Prefect) and a number of college students being the batch mates of the petitioner also filed written applications addressed to respondent no.5, in view of letter no.699/17 dated 20.10.2017 issued to the petitioner and expressed their views that the entire allegation and charges against the petitioner are false, therefore, favorable steps be taken for the petitioner (Annexure-5 series to the petition).

10. The matter also travelled before the Director-in-Chief, Respondent no.4, who was pleased to call the petitioner and respondent no.5 by letter no.97 dated 02.02.2018 for enquiring into the matter and to resolve the disputed issues raised by both the parties and for that, date of 06.02.2018 was fixed.

11. After extensive enquiry, the respondent no.4 was pleased to issue certain positive directions to the authority concerned to maintain good educational atmosphere in the Institution and



between the teachers and students of the organization and the petitioner was also warned not to raise any baseless complaint in future failing which, action would be initiated against him for cancelling his nomination and as such, matter of disputes resolved by order contained in Memo No.646(11) dated 28.06.2018 (Annexure-7 to the writ petition).

12. In spite of the matter of disputes and differences, which was found not true in course of enquiry, made by the respondent no.4 and the matter was resolved with a warning to the petitioner, by the H.O.D.- cum- Controlling Officer (respondent no.5), who cancelled the nomination of admission and removed him from the college and also ousted him from the Hostel room No.102 by impugned letter no.261/19 dated 06.05.2019 on the flimsy ground that the respondent no.5 had filed an informatory petition in Kankarbagh Police Station about two years ago by office Letter no.269/17 dated 11.09.2017 for the alleged offence of abusing and threatening to respondent no.5 and directed to evict Hostel Room No.102 within three days, failing which, legal action shall be taken against the petitioner (Annexure-8).

13. Learned counsel for the petitioner submits that aggrieved by the same, the petitioner requested respondent no.5 by an application dated 07.05.2019 (Annexure-9) for grant of at least



one month time to vacate the Hostel after appearing in the practical examination (Anatomy) scheduled to be held on 10.05.2019 but the respondent no.5 did not consider the request of the petitioner and refused to grant any more time even one hour after three days and directed the petitioner to strictly obey the order passed by him and also restrained him in appearing to the practical examination (Anatomy) by a fresh letter no.266/2019 dated 08.05.2019 as his nomination from the college had already been cancelled w.e.f. 06.05.2019. It is thus submitted that the impugned letter no.261/2019 is arbitrary, malafide and without jurisdiction, which effects the academic career of a student and as such, the same is liable to be quashed and respondent no.5 be punished with heavy cost.

14. Learned counsel for the petitioner further submits that being adversely affected upon the academic career of the petitioner by the impugned order Annexure-8 and 10 issued by the respondent No.5, the petitioner ultimately approached before the Director-in-Chief (Disease Control) respondent No.4 and also before the Principal Secretary, Health Department, Government of Bihar on 09.05.2019 and requested to allow the petitioner to continue classes and also sought permission to appear in the next practical examination (Anatomy) proposed to



be held in the next session and requested to give permission to continue study from the Hostel Room allotted to him, but all stood in vain and the petitioner has reasonable apprehension of spoiling of his academic career in the event of operation of impugned orders passed by the Respondent No.5, which are likely to be quashed by this Court.

15. A counter-affidavit is filed on behalf of the respondent nos.4 and 5, wherein, it is stated that the petitioner's admission has been cancelled and he was directed to be removed from the hostel by the Committee constituted in light of direction of the Principal Secretary, Secretary, Bihar, Health Department, Patna and disciplinary action has been taken against him due to his misconduct and misbehavior with teaching staff. For his misconduct and misbehavior he was earlier given ultimatum with regard to cancellation of his admission but the behavior and conduct of the petitioner could not improve and therefore, ultimately disciplinary action has been taken up.

16. It is submitted that earlier a complaint was filed by the Department and other non teaching staff and thereafter on 11.10.2017, a meeting of the all teachers/doctors along with Head of the Department was conveyed and in the said meeting all the allegations were discussed (Annexure-A to the counter-



affidavit). He used to disturb the administration of the College and threaten the teaching and non-teaching staffs and for that a notice was also given to the petitioner and an informatory petition was filed in Kankarbagh P.S. on 11.09.2017 (Annexure-C to the counter-affidavit). The petitioner has stated in one hand that he was restrained to appear in the examination and on the other hand, he has stated that he has requested to one Kishore Kumar (HOD), for grant of 5 grace marks. The statement in paragraph no.7 is itself contradictory. The petitioner has himself admitted this fact that he appeared before the respondent no.5 for granting five grace marks and when it was refused, he threatened to kill the HOD with fire arms and bomb.

17. It has also been admitted by the petitioner that show-cause, notice was served upon him along with copies of the two complaint petitions filed by the peon and the sweeper of the College and after giving sufficient time to reply, action was taken by Authorities.

18. A counter-affidavit is filed on behalf of Aryabhata Knowledge University, in which, it is stated that action had been taken by the Authorities of the College under the Circular and Guidelines of the Health Department. The earlier letter no.646 (11) dated 28.06.2018 was issued by Director in Chief, Health



and the letter of cancellation of admission has the approval of Principal Secretary, Health. The entire exercise of action against the petitioner had been at the level of College and Health Department. In view of the fact that the University is not having any record of the petitioner as the affiliation itself was granted in the year, 2015. Further, the Health Department and the Bihar College of Physiotherapy and Occupational Therapy would be competent to place on record all the statute/ordinance applied for taking action against the petitioner.

19. A supplementary counter-affidavit is filed on behalf of the respondent no.5, wherein, it is stated that due to misconduct and indiscipline action of the petitioner, it was very difficult to run the College, therefore, this fact was communicated to the Health Department and thereafter, the said Department gave warning to the petitioner vide letter no.646 (11) dated 28.06.2018 which is Annexure-7 of the writ petition, clearly stating that if the petitioner will file any baseless complain, then his admission will be cancelled and a copy of the same was given to him.

20. Learned counsel for the respondent no.5 submits that again on 17.04.2019, the petitioner threatened the HOD cum Controller of the College to kill with fire arms and bomb and by the conduct of the petitioner, College management has found



themselves very difficult to run the college as well as academic sessions and therefore, vide letter no.232 dated 22.04.2019, an information was given to the Health Department and also to the S.P., Patna (Annexure-E series to the counter-affidavit).

21. It is further submitted that eight man Committee was constituted for establishing the smooth environment in the College, in the interest of the College and for public at large, a decision was taken to cancel the admission of the petitioner on 06.05.2019 and a direction was given to him to vacate the hostel (Annexure-R/1 to the supplementary counter-affidavit).

22. It is pertinent to mention that the petitioner has taken admission for the session 2011-2015, which has already lapsed and he has not passed in any examination including years from 2011-2019 (about 9 years) which was earlier conducted by the Patna University and the Arayabhata University and now the examination is being conducted by the Health Department.

23. By way of filing second supplementary counter-affidavit on behalf of respondent no.5, it is submitted that the petitioner is a notorious person having criminal mentality. Despite several warnings, he used to misbehave with the teachers, official staff and administration of the College. He also misbehaved with the Head of Department of the College and used to abuse them with



filthy words. Whenever, he failed in the exam, he used to make pressure upon the HOD for passing him, which was not in control of the HOD as the examination was conducted by the University and when the HOD tried to make him understand, he started abusing him and threatening him with dire consequences.

24. It is submitted that when the petitioner understood that the HOD has not taken any step to pass him in the exam, which was indeed beyond his jurisdiction, he started abusing the HOD, then the HOD, having no option left, filed another complaint against him vide letter no.569/17 dated 11.09.2017 in Kankarbagh Police Station, Patna (Annexure-R/1).

25. A supplementary counter-affidavit has been filed on behalf of the Aryabhatta Knowledge University, in which, it is stated that the Bihar Health Science University Act, 2021 had been notified w.e.f. 09.06.2021. The section-3(1) and 3(3) of the said Act provides for contemplation to form Bihar Health Science University as evident from the gazette notification dated 28.07.2022. It was followed by establishment of the University by notification no.562(1) dated 28.07.2022 (Annexure-R/2 and R/3 to the supplementary counter-affidavit). To achieve the objects and implementation of section 4 of the Act, 2021,



various colleges and institutions had been detached from their previous Universities. It is stated that list of institutions had been provided which includes at serial no.31 at page-3 of the Notification, Bihar College of Physiotherapy and Occupational Therapy, which has been formally notified by Notification No.107(1) dated 17.02.2023.

26. A counter-affidavit is also filed on behalf of the respondent, by which, it is stated that from perusal of section 45 of the Act, 2021, it is evident that any student of a college or institution affiliated to other University, who immediately before the date of affiliation of the University, was studying or was eligible for any examination of the other Universities shall be permitted to complete the course but in the present case, petitioner was neither studying nor was eligible for any examination as his admission already stood cancelled on 06.05.2019 itself, i.e., much prior to establishment of Bihar University of Health Science.

27. Considering the rival submissions of the parties and on perusal of the entire facts and circumstance of the case, it is an admitted fact that even after getting a warning from the respondent no.4, the conduct of the petitioner did not improve. Neither he was passing in the examinations which is the stand of



the Authorities. Despite several warning and complaints, he did not change his behavior, therefore, the Authority was forced to taken such extreme action against the petitioner, which, in my opinion is not unlawful. If a student fails to discharge his obligations towards the teachers and even after getting several warnings, does not improve his conduct, such an action is appropriate to be taken by the concerned Authorities.

28. Accordingly, this Court is not inclined to interfere with the action taken by the concerned Authorities against the petitioner.

29. The present writ application is hereby dismissed.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.10.2024
Transmission Date	NA

