

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1034 of 2023
In
Civil Writ Jurisdiction Case No.692 of 2020

1. The Vice-Chancellor, Nalanda Open University Patna.
2. The Registrar, Nalanda Open University, Patna.

... .. Appellant/s

Versus

1. Dr. Sidheshwar Prasad Sinha Son of Late Birendra Prasad Singh, Resident of Indu Nilaya Apartment, Road No. 11-C, Rajendra Nagar, Patna-6.
2. The Hon'ble Chancellor Universities of Bihar, Bihar.
3. Prof. Sanjay Kumar, Registrar (Examination), Nalanda Open University, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P.K.Verma, Sr. Advocate Mr. Sanjay Kumar Ghosarvey, Advocate Dr. Anand Kumar, Advocate
For the Respondent/s	:	Mr. Bindhyachal Singh, Sr. Advocate Mr.Prashant Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-07-2024

The appellants are the Vice-Chancellor and Registrar of the Nalanda Open University, Patna, who challenge the judgment of the learned Single Judge, which interfered with the order of the Chancellor finding the writ petitioner's contractual appointment to be void under the Statute.

2. Shri P.K.Verma, learned Senior Counsel for the appellants, pointed out that the writ petitioner, respondent



herein, was appointed on a contractual basis after his retirement, which order of re-engagement had come even prior to his retirement. The Chancellor noticing that this was against the statutory provision, had interfered with the order clearly finding that the same is void for reason of the Statute having prohibited such appointment, after retirement. The learned Single Judge, according to the learned Senior Counsel, erred insofar as directing re-appointment of the writ petitioner.

3. Shri Bindhyachal Singh, learned Senior Counsel appearing for the writ petitioner pointed out from the judgment itself that, an interim order to re-appoint the writ petitioner was not complied with, which was specifically taken note of by the learned Single Judge. It is submitted that the writ petitioner was never informed before the order was passed and hence, the order is *non est* in law for reason of violation of principles of natural justice. It is also pointed out that the prohibition is only in re-appointment of a teaching and non-teaching employee and not in making an appointment on a contractual basis; which was carried out. It is also pointed out that the learned Single Judge had noticed that the writ petitioner had joined on 22.02.2020, in which circumstance, he was entitled to the emoluments, though he was not allowed to perform his duties. The emoluments



claimed is only for the two-year period to which he had a contractual appointment.

4. The provision which is the bone of contention is the second proviso to Section 54 (3), as extracted below:-

“54(iii) xx xx

xx xx

Provided further that the University shall not extend the period of service or re-appoint any teaching or non-teaching employee after his completing the age of sixty or sixty-two years, as the case may be.”

The provision specifically prohibits any extension of the period of service or re-appointment of any teaching or non-teaching employee after his completing the age of sixty or sixty-two years, as the case may be.

5. The writ petitioner was working as a Registrar (Examination) and he superannuated on 31.08.2019. Before his superannuation, a re-engagement was ordered on contract basis on 23.07.2019, which was to commence from 01.09.2019; just a day after his retirement. Obviously, the Chancellor had issued the order without noticing the proviso, which prohibited any extension of period of service or re-appointment.

6. We cannot find the re-engagement on contract basis



to be different from extension of the period of service or re-appointment, as has been prohibited in the proviso. The Chancellor noticing the error issued an order finding the earlier order of re-engagement on contract basis to be *void ab initio*.

7. The issue of violation of principles of natural justice does not arise since the Chancellor had corrected himself on the basis of the specific provision in the Statute. A notice and an explanation called for, would be a useless formality in the teeth of the prohibition as per the second proviso to Section 54(3). In such circumstance, we find absolutely no error in the cancellation of the contractual appointment. We also notice that in any event, the contractual appointment could have been ceased at any point by the Chancellor and in the present case, as we noticed, the cancellation was made only based on the provisions of the Statute, which cannot be disputed. Re-engagement on a contractual basis would amount to a re-appointment and extension of the period of service.

8. Insofar as the interim order having not complied with, the writ petitioner could have filed a contempt and action could have been taken on that. Merely because an interim order was not complied with, the writ petition cannot be allowed. It is an equitable relief prayed for by the writ petitioner in an extra-



ordinary remedy under Article 226 of the Constitution of India and to seek that the writ petition itself be allowed for non-compliance of the interim order is not permissible.

9. We also reckon the submission of the writ petitioner that he joined on 22.02.2020, which has been recorded by the learned Single Judge. However, it is an admitted fact that he did not continue to work during the contractual period. In such circumstance, we find absolutely no reason to order the emoluments during the said period also.

10. We find that there was clearly a prohibition in the Statute, from continuing an employee, whether teaching or non-teaching, after the stipulated age of retirement. A contractual appointment made, erroneously and in violation of the statutory provision does not create any right to be continued. Despite an interim order for re-appointment, since the writ petitioner did not work in the post, there is no question of any emoluments being paid; which is prohibited on the principle of 'no work no pay'. The writ petitioner cannot take advantage of an erroneous order, passed also in violation of the Statute and challenge its cancellation, which is on the ground of it being *void ab initio*; which consequence cannot by any deliberation be altered; making the principle of '*audi alteram partem*' an empty



formality.

11. We allow the appeal, leaving the parties to suffer their respective costs.

12. Interlocutory application, if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
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