

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8584 of 2015

Dr. Sudhir Kumar Chaudhary Son of Late Fulo Chaudhary Resident of village
- Khagaria, P.S. Khagaria, District - Khagaria

... .. Petitioner/s

Versus

1. Kameshwar Singh Darbhanga Sanskrit University and Ors
2. The Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga
3. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga
4. The Principal Secretary, Department of Education, Government of Bihar, Patna
5. The Director, Higher Education, Department of Education, Government of Bihar, Patna
6. The Secretary, Shri Jagjivan Abhyuday Sanskrit College, Abhyuday Nagar, Amarpur, Banka null null
7. The Secretary, Saraswati Vilas Sanskrit Mahavidyalaya, Sokhara, Barauni, Begusarai

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Satyam Shivam Sundaram, Advocate
For the Respondent/s	:	Mr.Vinay Kirti Singh- GA-3
For the Respondent no. 4 & 5:	:	Mr. Kunal Tiwary, AC to GA-2
For K.S.D. University	:	Mr. Deepak Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

11 05-04-2024 The present application has been filed by the petitioner being aggrieved by the Office Order, issued under Memo No. 3648/15, dated 06.05.2015 passed by the Registrar, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga, by which the governing body of Saraswati Vilash Sanskrit College, Sokhara, Barauni, Begusarai, was directed to return the services of the petitioner from Saraswati Vilash Sanskrit College, Sokhara, Barauni, Begusarai, to Shri Jagjivan



Abhyuday Sanskrit College, Abhyuday Nagar, Amarpur, Banka.

2. The brief facts involved in the present case is that the petitioner was appointed in the year 1992 on temporary basis on the post of lecturer in Shri Jagjivan Abhyuday Sanskrit College, Abhyuday Nagar, Amarpur, Banka. Subsequently, upon the recommendation of the Bihar College Service Commission and the decision of the governing body, the service of the petitioner was approved permanently on 25.05.1998 by the University. with effect 25.05.1998, vide letter, dated 21.09.1992.

3. Both the colleges, i.e. Saraswati Vilash Sanskrit Mahavidyala, Sokhara, Barauni, Begusarai, and Shri Jagjivan Abhyuday Sanskrit College, Abhyuday Nagar, Amarpur, Banka, are affiliated colleges and comes under the jurisdiction of Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.

4. Due to health reasons, on the request of the petitioner, the services of the petitioner was transferred from Shri Jagjivan Abhyuday Sanskrit College, Abhyuday Nagar, Amarpur, Banka to Saraswati Vilas Sanskrit College, Sokhra, Barauni, Begusarai, with mutual consent and agreement of the governing bodies of both the colleges on 13.04.2011 (Annexure-7).



5. The terms and conditions of mutual agreement, as referred in Annexure-7, prescribed that the college at Banka shall not demand back the service of the petitioner.

6. Learned counsel for the petitioner submits that this decision was acted upon by both the colleges and the services of the petitioner was transferred to Begusarai along with all the documents including PF etc. The decision of the governing bodies of the both the colleges was approved by the Syndicate of the University, in its meeting, held on 12.08.2011, vide agenda no. 11 and decision was forwarded by the University to the governing body, vide letter, dated 20.08.2011, as would be evident from Annexure-9.

7. The petitioner, thereafter, was relieved by the college at Banka on 06.09.2011 and he submitted his joining in the College, at Begusarai immediately. Thereafter the petitioner started getting salary etc, from the College, at Begusarai. All of a sudden, by the impugned order, dated 06.05.2015, the services of the petitioner was directed to be returned back to his parent college at Banka.

8. Learned counsel further submits that the impugned order does not assign any reason of returning back the services of the petitioner to the parent college and further no explanation



and/or show cause was asked from the petitioner before taking the impugned decision. The petitioner has been working on a sanctioned post and decision to return the services of the petitioner at Banka shall prejudicially affect the interest of the petitioner.

9. Learned Counsel relies upon the decision of the Supreme Court, in the case of **Mohinder Singh Gill and Others v. The Chief Election Commissioner, new Delhi and Others**, reported in (1978) 1 SCC 405 and **M/s Kranti Association Private Limited and Another v. Masood Ahmed Khan and Others**, reported in (2010) 9 SCC 496.

10. Learned Counsel for the petitioner also submits that the order impugned is without jurisdiction, which would be evident from the letter, dated 24.02.2021, issued by the Registrar of the University, stating therein that the power of appointment is of the governing body of the college and the University has no role to play in this regard. The aforesaid letter, dated 24.02.2021, was issued on an application filed by the petitioner on 01.07.2021 for re-consideration of the impugned order.

11. On the other hand, learned counsel for the University-respondent nos. 1 to 3 submits that there is no



provision for transfer of the teachers of affiliated colleges with mutual consent of the governing body in the Statute/Rules/Act of the University. The governing bodies of the colleges did not obtain any prior permission/approval from the University for transfer of the petitioner from Banka to Barauni. The confirmation of the transfer of the petitioner by the Syndicate, as referred in Annexure-9, has not been substantiated by the petitioner by bringing on record the decision of the Syndicate. He further submits that the recommendation of the Bihar College Service Commission for appointment of the petitioner was specific for Shri Jagjivan Abhyuday Sanskrit College, Abhyuday Nagar, Amarpur, Banka and, hence, the appointment of the petitioner is valid only for Shri Jagjivan Abhyuday Sanskrit College, Abhyuday Nagar, Amarpur, Banka.

12. Learned Counsel further submits that the impugned order, dated 06.05.2015, has already been acted upon and the petitioner has been shifted/transferred/sent to Shri Jagjivan Abhyuday Sanskrit College, Abhyuday Nagar, Amarpur, Banka in the year 2015 itself.

13. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.



14. The petitioner has mainly challenged the impugned order on the ground of violation of principles of natural justice. The contention of the petitioner that the impugned order does not assign any reasons for transfer of the petitioner from Barauni to Banka and the reason supplemented by the respondent-University by way of counter affidavit is inconsequential in view of the decision of the Supreme Court, in the case of **Mohinder Singh Gill** (supra). Paragraph 8 of the decision is quoted herein below:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji]*, 1951 SCC 1088 : AIR 1952 SC 16] :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do.



Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older: A Caveat”

15. Learned counsel for the petitioner has also relied, in support of his argument, on paragraph 47 of **M/s Kranti Association Private Limited** (supra), which is quoted herein below:

“47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has



been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of



precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija v. Spain* [(1994) 19 EHRR 553] EHRR, at 562 para 29 and *Anyia v. University of Oxford* [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due



process”.”

16. After going through the impugned order, I find that the submission of learned counsel for the petitioner is correct inasmuch as the impugned order does not assign any reason for transfer of the petitioner from Barauni to Banka.

17. The Supreme Court has held that the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

18. In the present case, the service of the petitioner was transferred with the approval and consent of the governing bodies of both the colleges and the decision of the governing bodies, taken in the year 2011 was approved by the Syndicate of the University in 2011 itself and since then the petitioner discharged his duty at Barauni till the impugned order was passed.

19. Since principles of natural justice has not been followed before passing the impugned order, the same is liable to be set aside.

20. Accordingly, the impugned order, dated 06.05.2015, is set aside and the matter is remitted back to the University to take a fresh decision in accordance with law by affording the opportunity of hearing to the petitioner within a period of two months from the date of receipt/production of a



copy of this order.

21. In the mean time, the status quo, as of today, shall
be maintained.

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

(Anil Kumar Sinha, J.)

AFR/
Sudha/-

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