

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6253 of 2025

Jyoti Narain Singh, Son of Birbhadra Prasad Narain Singh, resident of 32 Power House Road, Dumri Road, Near Pushpanjali Gas Service, Maripur, Musahri Farm, P.O.- Musahri, P.S.- Kazi Mohammadpur, District- Muzaffarpur, Pin - 842002.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Bihar, Patna.
2. Director, Higher Education, Education Department, Bihar, Patna.
3. The Chancellor of Universities of Bihar, Raj Bhawan, Patna.
4. B.R. Ambedkar Bihar University, Muzaffarpur through its Registrar.
5. Vice Chancellor, B.R. Ambedkar Bihar University, Muzaffarpur.
6. Registrar, B.R. Ambedkar Bihar University, Muzaffarpur.
7. Dr. Binay Shanker Roy, Son of not known to the petitioner, presently posted and working in the capacity of Professor and Head of the University Department of English, B.R. Ambedkar Bihar University, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Shrivastava, Sr. Advocate Ms. Shreyanshi Raj, Advocate Mr. Raushan, Advocate Md. Tauseef Waquar, Advocate
For the State	:	Mr. Sazid Salim Khan, SC- 25
For the Resp. No.7	:	Mr. Binodanand Mishra, Sr. Advocate Mr. Sandeep Kumar, Advocate Mr. Chandan Jha, Advocate
For the Chancellor	:	Mr. R. K. Giri, Advocate Mr. Amrish Kumar, Advocate
For the University	:	Mr. Rakesh Kumar Samarendra, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 09-12-2025

This Court has heard the learned Senior Advocate/
Advocate for the respective parties.

2. The petitioner is aggrieved with the Office order
dated 17.02.2025, bearing Memo No. B/344, issued by the



Registrar of the Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur (hereinafter referred to as 'the University') by which the petitioner has been transferred from University Department of English of the University to T.P. Verma College, Narkatiyaganj, West Champaran on administrative grounds and accordingly relieved from the University Department of English and has further been debarred from any other job or responsibility, including examination for the next two years with effect from the date/issue of the said order. The petitioner also sought a direction upon the concerned respondents to take appropriate step towards considering the case of the petitioner for appointing him in the capacity of the Head of the University Department of English by dint of his seniority in accordance with the provisions contained under the Statutes for Scheme of Rotation of Headship in the Department of Universities/College of the Universities in the State of Bihar, as communicated by letter dated 30.06.2008, bearing Memo No. BSU-26/2008-2155/GS(I) issued from the Governor's Secretariat, Bihar, Patna.

3. The brief facts, relevant for consideration are that the writ petitioner was duly appointed against the post of Lecturer in English, based upon the recommendation made by



the Bihar State University Service Commission (hereinafter referred to as 'the Commission') vide notification dated 04.11.1996; following his joining on the said post on 06.11.1996. Subsequent upon his joining, the respondent no.7 was appointed in the Services of the University in the capacity of Lecturer in English in the year 2003 and due confirmation of his services with effect from 25.08.2003.

4. The general conditions of service of employees of the Patna, Bihar, Ranchi, Bhagalpur, Magadh, L.N. Mithila and K.S.D. Sanskrit Universities, especially Article 3(7) of the Service Statutes provide that the period of service rendered with any other previous university is only to be considered for continuity of service for the purpose of protection of pay and allowances draw, leave and half pay leave earned in that University and the age of retirement as well as the grant of benefit thereof but not for determination of his seniority. Nonetheless, while the petitioner and respondent no.7 were continuing in the capacity of Reader/Associate Professor in the services of the University by a notification dated 26.03.2017, duly approved by the Syndicate of the University, the petitioner was granted promotion in the rank of Professor in English in the services of the University w.e.f. 06.11.2013, whereas the



respondent no.7 was granted promotion in the rank of Professor in English w.e.f. 28.08.2012 after taking into account of his earlier services rendered in the College of Arunachal Pradesh, where he had joined the College on 22.08.1995.

5. The provisions contained under Article 5.3.9 of the Statute of the Career Advancement Scheme clearly lays down that promotion from Reader to Professor is a personal promotion and it is not against a sanctioned post. Further Clause 7.1.0 says that when a teacher is promoted under the said Statute, the post held by him/her shall be upgraded with effect from the date of his/her promotion till the incumbent continues to hold the post but shall be converted into the basic grade post in the event of the incumbent's appointment to a higher post or when the post falls vacant due to any eventualities.

6. Adverting the aforementioned background of the case, learned Senior Advocate Mr. Abhinav Shrivastava urged that for scheme of rotation of Headship in the Department of Universities/College of the Universities, the concerned authorities under letter dated 30.06.2008 lays down the provisions for appointment of Heads in different departments of Universities which, inter alia, provides that the headship of a department be rotated only amongst the first four senior most



teachers. Despite the aforesaid fact, the respondent no.7 was appointed as Head of the University, Department of English in a patently illegal manner ignoring the claim of the petitioner.

7. Learned Senior Advocate taking this Court through various averments and the annexures appended to the writ petition submitted that undue favour by the authorities of the University would be manifest from the fact that while respondent no.7 was continuing in the capacity of Proctor of the University, he was made Head of the P.G. Department of English and further authorized to discharge the duties and functions of Dean, Students Welfare and Coordinator of the College Development Council of the University in addition to the aforementioned responsibilities. Giving responsibilities and authorizing the respondent no.7 of discharging duties and functions of all the higher posts to one and only individual is in complete transgression to the letter dated 24.03.2023 issued by the Education Department of the State of Bihar addressed to the Vice-chancellors of all the Universities in the State of Bihar. By the said letter, it was instructed that one person should be given the responsibility against only one post as far as possible and only in the event of unavailability of an eligible person, one person may be allowed the duties attached to the several



administrative posts.

8. The entire facts have been brought to the knowledge of the authorities of the University by filing a detailed representation at the hands of the petitioner narrating the manner in which claim of the petitioner was ignored and the respondent no.7 has been appointed as a Head of the Department of English, which clearly cast a doubt on the legality and validity of service of respondent no.7, besides the infirmities in the affairs of the University. Despite his detailed representation, when no action was taken, the petitioner preferred a representation before the Chancellor of the Universities, this led to issuance of a show-cause notice under letter dated 07.12.2024 (Annexure-P/9) for purported use of unparliamentary words by him against respondent no.7. In the meanwhile, some physical assault was also made on the petitioner by some miscreants and this fact has also been brought to the knowledge of the Vice-chancellor of the University indicating that the miscreants had threatened him with dire consequences, if he shall not withdraw the claim of seniority. The petitioner also submitted his reply to the show-cause notice dated 07.12.2024 stating in detail the various facts and circumstances, besides his entitlement and assertion of he



being senior to respondent no.7. However, all of a sudden the impugned order dated 17.02.2025 came to be passed.

9. Learned Senior Advocate Mr. Shrivastava referring to the impugned order has submitted that besides the fact the petitioner had neither been afforded any opportunity of being heard nor was made aware of any Committee having been constituted or the matter having been referred to the Statutory Discipline Committee of the University, the same is punitive in nature and complete disregard to the provisions contained under the Bihar State Universities Act. It is vehemently contended that raising a grievance or claiming seniority over respondent no.7 in no stretch of imagination can be said to be unparliamentary, moreover, the order of the Vice-chancellor debarring the petitioner from any other job or responsibility, including the examination work for the next two years by the order under impugned is wholly unsustainable in law and blatant abuse of the power by the authorities concerned. It has also been contended that there is a provision contained under the Statutes on Formation of Standing Committees under letter dated 20.12.1986 issued from the Governor's Secretariat, Bihar, Patna laying down the provisions with respect to constitution of different committees. Article 2(n) of the said Statutes lays down



a stipulation regarding constitution of the Discipline Committee for teachers. However, in the case at hand no such committee had been constituted and on the basis of the recommendation made by the purported committee, the impugned order came to be passed, which is fit to be quashed and cancelled.

10. To buttress all his submissions, reliance has also been placed to a Bench decision of this Court in the case of ***Dr. Deo Chandra Choudhary Vs. The L.N. Mithila University, Darbhanga (C.W.J.C. No. 22145 of 2014)***.

11. Refuting the aforementioned contention of the learned Senior Advocate for the petitioner, Mr. Rakesh Kumar Samarendra, learned Advocate for the University, has submitted that once the petitioner has voluntarily accepted the transfer order and joined on the transferred post, no cause of action survived and thus any challenge to the impugned order is wholly misconceived. It is further contended that the petitioner was served with the show-cause notice for using an unparliamentary word against the respondent no.7, the reply to the show-cause filed by the petitioner was found unsatisfactory and thus a committee was constituted to examine the reply of the petitioner. The petitioner was called upon by the Committee time and again, but he refused to receive the letter/notice.



Certain other imputation has been levelled against the petitioner by the Principal, M.P.S. Science College, Muzaffarpur. After meticulous examination, the Committee unanimously resolved to accept the recommendation and suggestion of the Chairman and authorized the Vice-chancellor to the place of posting of the petitioner, accordingly, the impugned order came to be passed on an administrative ground.

12. The petitioner deliberately attempted to tarnish the image of the University as well as respondent no.7, which is gross misconduct and is violation of Code of Conduct. So far the claim of the petitioner regarding *inter se* seniority is concerned, the provision of Clause 9.0.0 of the Statute under which both were promoted as Reader and Professor clarified this issue. There is no iota of confusion that the Seniority of Teachers promoted under these statutes shall be determined from the date of promotion (in a particular rank) but the *inter se* seniority of the teachers promoted from the same date shall be the same as they had on the lower post. After counting of the past services of both the petitioner and the respondent no.7, it is manifest that respondent no.7 is much senior to the petitioner. The seniority of the petitioner viz-a-viz respondent no.7 is a settled matter for more than last ten years and it was determined



after following procedure prescribed by the University and the Syndicate.

13. Mr. Binodanand Mishra, learned Senior Advocate representing the respondent no.7 controverting all the submissions raised on behalf of the petitioner submitted that in the matter of transfer once the notification is acted upon, nothing subsists and the notification of transfer becomes redundant for all purposes. To support the aforesaid contention, reliance has been placed on a Bench decision of this Court in the case of *Mahmood Azam Siddique Vs. The State of Bihar & Ors.*, reported in *2000 (3) PLJR 139*.

14. Further referring to a decision in the case of *Registrar General, High Court of Judicature of Madras Vs. R. Perachi & Ors.*, reported in *(2011) 12 SCC 137*, learned Senior Advocate submits that transfer is an incident of service and one cannot make a grievance if transfer is made on administrative grounds, and without attaching any stigma. In the matter of transfer of Government employee, scope of judicial review is limited and High Court cannot interfere with order of transfer lightly since Court cannot substitute their own decisions in the matter, unless the decision is vitiated by mala fide or infraction of any professed norm or principle governing the transfer, which



alone can be scrutinized judicially. He would thus submit that the facts of the case clearly demonstrate that only on the administrative ground, the transfer order came to be issued; hence any challenge led by the petitioner in the present writ petition is wholly unsustainable. The claim of the petitioner for seniority over the respondent no.7 has no leg to stand for the simple reason that respondent no.7 was promoted to the post of Reader and later on Professor much earlier, but these orders have never been questioned by the petitioner and based upon the seniority, which led to promotion to the aforementioned post; once the respondent no.7 has been appointed to the post of Head of the Department on principle of rotation basis, the same cannot be questioned. The said appointment is in complete consonance of Article 1 of the Statutes, which mandates that the Senior most teachers shall be posted in the department on rotation wise.

15. The writ petition is said to be bad and improper on account of disjointed cause of action/relief based on disjointed cause of action and not consequential to the dominant relief sought for. Primarily the writ petition is filed questioning the legality of the transfer order, hence the petitioner cannot be allowed to raise the claim of seniority, as neither it is consequential relief to the impugned order nor the basis thereof.



To support the aforesaid contention Mr. Mishra, learned Senior Advocate for respondent no.7 referred to a Bench decision of this Court in the case of ***Dr. Maithili Sharan Vs. State of Bihar & Ors.***, reported in ***1999 (3) PLJR 668***.

16. After having patiently heard the learned Senior Advocate/ Advocate for the respective parties and on perusal of the materials available on record, this Court finds that in substance two issues have been framed for determination in the present lis; (i) as to whether the impugned order of transfer is based on administrative ground or it is punitive in nature, besides *mala fide* and as such requires interference; (ii) The another issue for consideration is as to whether the appointment of respondent no.7 on the post of Head of the University, Department of English is undertaken by ignoring the claim of the seniority of the petitioner in transgression to relevant prescription of the Statutes and the Rules and Regulation governing the seniority of the teaching employees of the University.

17. The issue of transfer and posting has been considered time and again and settled by a catena of decisions. There is series of decisions, which emphasize and underscored that the employee does not have any vested right to be posted at



a particular place if the provision of transfer is an essential condition of service. It is entirely upon the competent authority to decide when or where or at what time a public servant is to be transferred from the present posting. In ***Gujarat Electricity Board Vs. Atmaram Sungomal Poshani***, reported in ***AIR 1989 SC 1433***, the Court held that transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is necessary in public interest and efficiency in the public administration. The Court thus should not interfere with a transfer/ posting, which is made in public interest or on administrative exigencies.

18. In ***State Bank of India Vs. Anjan Sanyal***, reported in ***AIR 2001 SC 1748***, the Apex Court held that an order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is *mala fide* or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the



competence to pass the order. The series of decisions need not be required to be quoted hereunder to gloss the settled principle that the assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision unless the decision is vitiated by *mala fides* or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicted. [vide *N.K.Singh v. Union of India (1994) 6 SCC 98*].

19. The Courts have been reminded time and again that in a matter of transfer of a Government employee, the scope of judicial review is limited and High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer. The aforementioned position has been reiterated in *Airports Authority of India Vs. Rajiv Ratan*



Pandey & Ors., reported in ***(2009) 8 SCC 337***.

20. Before proceeding further, it would also be pertinent to recapitulate that the power of transfer cannot be used as a substitute for inflicting lawful punishment through purported disciplinary process, if the circumstances indicate that the transfer order was passed as a punitive action without following due process, the order will be considered malice in law. If the authority passing the order is competent to exercise power over both transfer and disciplinary matters, a composite order might technically be possible if the transfer is genuinely for administrative reason and the punishment follows proper procedure, but the authorities must ensure the transfer order is not in any disguised penalty bypassing the rules of natural justice.

21. Now coming to the order impugned dated 17.02.2025 (Annexure-P/14). Bare perusal thereof, it clearly manifest that the same has been passed on the recommendation of Statutory Discipline Committee (For Teachers, Officers & Staffs of the University) in view of the report of three men committee. The impugned order of transfer, *inter alia*, further debarred the petitioner from any other job of responsibility, including examination work for the next two years with effect



from the date of issue of this order.

22. It would be worth observing 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. The Government/authorities must defend its action on the basis of the order that it has passed, and it cannot improve its stand by filing subsequent affidavits as laid down by the Apex Court long back in the case of *Commissioner of Police Vs. Gordhandas Bhanji*, reported in *AIR 1952 SC 16* followed by *Mohinder Singh Gill Vs. Chief Election Commissioner*, reported in *(1978) 1 SCC 405* and further in the case of *Dipak Babaria Vs. State of Gujarat*, reported in *(2014) 3 SCC 502*.

23. Mere nomenclature of order would not be sufficient to term that it has been passed on administrative ground. The Court may lift the veil from the order to see the intent of the order, if the challenge is based on the reeks of an action being *mala fide* and punitive in nature. If the real purpose of transfer is to penalize an employee for alleged misconduct without providing an opportunity to be heard, the order is considered punitive and is liable to be set aside by a court or Tribunal.



24. The order impugned debarring the petitioner from any other job of responsibility, including examination work for the next two years with effect from the date of issue of this order apparently demonstrate that it is a composite order of transfer and the punishment. Once the order of transfer is based upon the recommendation of the Statutory Discipline Committee, the process for constitution of the committee and the procedure, which has been followed must be in consonance with the Statutes/Act. Article 2(b) of the Statute on formation of Discipline Committee clearly stipulates that the said committee shall be consisting of Vice-chancellor as the Chairman, the Pro Vice-chancellor, three members to be nominated by the Syndicate, one Senior most Teacher against the Dean of faculty, Proctor and the Registrar, as the Member Secretary. However, the Committee constituted either the Discipline Committee or the Committee constituted to examine the reply of the petitioner does not appear to be in consonance with the prescriptions provided under the Statute for formation of Committee. If the Statute has conferred the power to do an act and has laid down the manner in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The aforementioned principle



adopted in *Taylor Vs. Taylor [(1875)LR 1 ChD 426]* is well recognized and explained in series of decision.

25. The contention of the learned Advocate for the respondent University as well as learned Senior Advocate appearing on behalf of respondent no.7 that in the matter of transfer once notification is acted upon nothing subsists and the notification of transfer become redundant for all purposes. In the opinion of this Court would not be applicable in the present case, once the order is found to be not mere a transfer under administrative ground, rather punitive in nature actuated with malice and in transgression to the Statute. It is well settled that no principle of estoppel override the law. An order suffers from the vice of transgression of statutory prescriptions or the principle of rule of law or actuated with malice amenable to writ jurisdiction, hence the objection raised by the University and the private respondent does not find any substance in the facts of this case.

26. In view of the facts aforementioned, this Court finds that the impugned order of transfer is *per se* composite order, being punitive in nature imposing a harsh punishment without following the proper disciplinary procedure and thus is hereby held to be illegal and liable to be set aside. The issue no.(i)



answered accordingly.

27. So far the another issue raised in the present writ petition with regard to inter se seniority of the petitioner vis-a-vis respondent no.7 and based upon which the claim of Head of the Department in English is maintained; this Court finds that the respondent no.7 though has admitted in the services of the University w.e.f. 25.08.2003, but nonetheless he has been duly promoted to the rank of University Professor under Career Advancement Scheme vide University Memo No.B/148 dated 26.03.2017 as per the provisions of the Statute assented to by the learned Chancellor w.e.f. from 20.08.2012, but the same has never been questioned. The Statute in question warranting scheme of rotation of Headship in the department be rotated only amongst the first four senior most teachers (Professor/Reader) as the case may be of the subject concerned and only in case where there is no Professor, the Headship should be rotated amongst four senior most teachers and/or less than four. Be that as it may since the order of promotion of respondent no.7 as a Professor has never been questioned and the Court is also persuaded with the argument of learned Senior Advocate for respondent no.7 that it is disjointed cause of action and is not consequential to the dominant relief sought for in the



writ petition. This Court observed and declares that other relief to be beyond the frame of the present writ petition and reiterates the finding of the Bench decision rendered in the case of **Maithili Sharan** (supra), hence no adjudication is required on the second issue. However, the petitioner will be entitled to raise this issue, if so warrant.

28. Accordingly, the impugned order dated 17.02.2025 is hereby set aside.

29. Consequent upon setting aside the impugned order, the petitioner shall be restored to its earlier position forthwith. However, this order would not preclude the concerned respondents to act in accordance with law, if the facts and circumstances still warrants.

30. The writ petition is allowed to the extent indicated hereinabove.

31. The parties shall bear their own costs.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.12.2025
Transmission Date	NA

