

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15379 of 2015

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Satya Prakash Son of late Mudrika Prasad resident of Flat No. 3/3, Yadubansh Path, Boring Canal Road, Police Station - Budha Colony, District - Patna.

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Department of Human Resource Development, Govt. of India, New Delhi.
2. The Central University of South Bihar through its Vice Chancellor, BIT Campus, P.O. B.V. College, P
3. The Vice Chancellor, Central University of South Bihar, BIT Campus, P.O. B.V. College, Patna.
4. The Registrar, Central University of South Bihar, BIT Campus, P.O. B.V. College, Patna.
5. C.L., Prabhavathi, the Registrar, Central University of South Bihar, BIT Campus, P.O. B.V. College,

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ansul, Sr. Adv Mr. Rajesh Shukla, Adv Mr. Ravi Bhardwaj, Adv Mrs. Aditi Sharma, Adv
For the Respondent/s	:	Mr. S.D. Sanjay, Sr. Adv Mr. Mohit Agarwal, Adv Mr. Rahul Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA

CAV JUDGMENT

Date- 16-12-2025.

Heard the parties.

2. The petitioner in the present writ application has prayed for issuance of a writ in the nature of certiorari for quashing the office order no. 138/15 datd 18.09.2015 whereby, as per the petitioner, the petitioner has been relieved of his duties without any prior information; as the same is wholly without jurisdiction; contrary to the provisions of the Act and the Statute and is, therefore,



arbitrary and illegal. Consequent upon the quashing of the office order no. 138/15 dated 18/09/15, the petitioner further prays for direction to treat the petitioner in continuous service without any break of service with all admissible and consequential benefits.

3. Learned counsel for the petitioner states that the petitioner was appointed as Deputy Registrar in the Central University of Bihar (now known as the Central University of South Bihar), pursuant to Advertisement No. CUB/Advt./21/2013 dated 16.09.2013. It is submitted that the petitioner duly participated in the selection process, was selected by the competent Selection Committee, and thereafter appointed on a substantive post by order dated 19.12.2013 (Annexure:1), issued with the approval of the Executive Council, under Clause 23(2) of the University Statute, in the pay band of Rs. 15,600–39,100 with Grade Pay of Rs. 7,600/-. The petitioner joined his duties on 26.03.2014 and the joining report was duly notified.

4. Learned counsel further submits that the petitioner discharged his duties diligently and to the satisfaction of all concerned authorities. Except for one instance where he was asked to explain his brief absence from office during an examination period—an explanation which was accepted and the leave regularized—there was never any allegation or show cause issued



against him at any point of time. It is asserted that during the entire tenure of service, the petitioner maintained an unblemished record and no misconduct was ever attributed to him.

5. It is further stated that, to the petitioner's shock, he was abruptly served with a letter dated 18.09.2015 (Annexure:3) issued by Respondent No. 4, intimating him that he stood relieved from the post of Deputy Registrar with immediate effect and that his dues would be released. Along with the said letter, Office Order No. 138/15 dated 18.09.2015 (Annexure;4) was enclosed, directing all departments to complete the "No Dues" formalities. Learned counsel emphasizes that prior to issuance of the impugned communication, the petitioner was never afforded any show cause notice, nor was any assessment of his suitability undertaken, nor was any reason disclosed for the termination of his services.

6. Learned counsel submits that the petitioner is an "employee" within the meaning of Section 2(i) of the Central Universities Act, and his conditions of service, including manner of termination, are governed strictly by the Statute. Under Entry 12(2)(iv) read with Entry 25 of the Second Schedule, the Executive Council alone is the competent appointing and removing authority. It is urged that the Statute permits removal only on grounds of misconduct or for good cause, and only after



affording reasonable opportunity of hearing and by giving three months' notice or salary in lieu thereof. In the present case, neither misconduct nor any good cause has been recorded, nor any opportunity granted, and the impugned order is completely silent on these mandatory statutory requirements.

7. It is further contended that the impugned action is without jurisdiction, as no meeting of the Executive Council was convened since July 2015 and upto the date of termination. Learned counsel submits that essential disciplinary powers vested in the Executive Council cannot be delegated to the Vice-Chancellor or any other authority, and any such purported exercise of power would be illegal tantamounting to colourable exercise of power.

8. Learned counsel for the petitioner, adverting to the supplementary affidavit, states that the respondents cannot rely upon the plea of probation, as the governing Act and Statute do not contemplate any probationary arrangement for employees of the University. It is submitted that the petitioner's appointment order itself stipulates that the terms and conditions of service shall be governed strictly by the Act, Statutes, Ordinances and Regulations of the University. However, none of these statutory instruments, except a draft Ordinance, contain any provision relating to



probation. Learned counsel points out that even this Ordinance has admittedly been published in the Official Gazette on 17/08/2016 in terms of Section 43 of the governing act and therefore it was not enforced on the date of appointment as well as on the date of termination .” Therefore, reliance upon such an inoperative Ordinance cannot be permitted, nor can clauses in the appointment letter derived from an unpublished Ordinance override the Act and Statutes.

9. Learned counsel further argues that even assuming, without admitting, that the petitioner was on probation, the concept of probation does not exist in the Act or the Statute and could not have been imported through the appointment letter. It is submitted that any such contractual clause contrary to the parent statute is void, oppressive, and unenforceable. The impugned order, even on the touchstone of probation, fails to disclose any finding of unsuitability, objective (dis)satisfaction, or even a whisper of reasons. Accordingly, the respondents’ justification of termination on the alleged ground of “probation period” is wholly misconceived.

10. It is further stated in the Supplementary Affidavit that even assuming, for argument’s sake, that probation existed, the order discloses no finding of unsuitability, no objective



(dis)satisfaction of the competent authority, and no material demonstrating assessment of performance. The absence of any such reasoning, it is urged, renders the action arbitrary. Learned counsel further submits that the petitioner has an exemplary record of service and had joined the University after resigning from prestigious positions in CISF, NTPC, various banks, and even foregoing a UPSC appointment, solely out of commitment to contribute to the academic development of Bihar. The petitioner, despite belonging to a humble background, has an outstanding career profile. Copies of his bio-data and relevant appointment and resignation letters have been brought on record to substantiate his professional credibility.

11. It is lastly submitted that the impugned order is non-speaking, arbitrary, violative of principles of natural justice and Article 14 of the Constitution. The termination has been carried out in a clandestine and abrupt manner, causing severe prejudice to the petitioner. The petitioner therefore seeks interference of this Court, having no other efficacious alternative remedy.

12. Learned counsel for the respondent no. 2 by way of Counter Affidavit submits that the impugned order does not amount to dismissal, removal or discharge, but is merely a termination of probation in accordance with the terms of



appointment. It is further submitted that the petitioner's appointment order clearly stipulated a probationary period of two years and that, on his own showing, he was still on probation on the date of termination. The University contends that a probationer has no right to hold the post and that termination of probation does not require a prior opportunity of hearing, nor does it attract principles of natural justice. It is argued that a simple order of termination, without reasons being recorded, is legally permissible, as disclosure of unsuitability and unsatisfactory performance may unnecessarily cast a stigma.

13. Learned Counsel for the respondent further asserts by way of Supplementary Counter Affidavit that the Petitioner was appointed on probation for two years, a condition expressly set out in the Appointment Letter and in the Written Agreement executed on 06.03.2014 in compliance with Section 33 of the Central Universities Act, 2009. The Agreement, signed by the Petitioner and the University authorities, was duly furnished to him and forms the statutory basis of his service conditions. The Petitioner never questioned the terms of probation or any clause of the Agreement at any stage prior to filing the writ petition. Under Statute 23(1), the service conditions of non-teaching employees are governed by the terms of the contract, and only in absence of



such contract do the Statutes and Ordinances apply; in the present case, both the Appointment Letter and the Written Agreement contain identical provisions regarding probation.

14. It is further stated that the probation framework is also supported by the University Ordinances framed under Section 28 of the Act. The Executive Council, through resolutions passed in its meetings dated 22.05.2010, 20.05.2011 and 30.07.2011, authorized and approved the formulation of administrative ordinances, including provisions relating to probation, confirmation and termination. Subsequent communications from the Ministry of HRD, including letters dated 12.10.2012, 19.10.2012 and 11.06.2013, led to modifications in certain clauses; however, the Ordinance provisions governing probation and termination of non-teaching staff were never suspended. The final communication of the Government of India dated 04.03.2015 resulted in the Ordinances taking their final shape, later published in the Official Gazette on 17.08.2016. Under Statute 37(5), these Ordinances became operational from the date of their approval by the Executive Council.

15. In this background, the Respondent submits that on the date of the Petitioner's termination on 18.09.2015, the provisions relating to probation and termination during probation



were validly in force. The Petitioner, not having been confirmed, continued as a temporary employee and was liable to removal during probation in accordance with the terms of his contract and the applicable Ordinances.

16. Learned counsel for the respondent further submits that the provisions of Statute 25 or other statutory clauses relied upon by the petitioner have no application to cases of probation. It is contended that the impugned order was issued by the Vice-Chancellor in exercise of powers conferred under Section 11(3) of the Act and suffers from no jurisdictional error, arbitrariness or malice. The University denies the petitioner's allegations of mala fide and submits that many of the averments made in the writ petition and supplementary affidavit do not require factual response, lest any clarification be misconstrued as stigmatic. It is stated that the probation clause in the petitioner's appointment was neither arbitrary nor oppressive, and the petitioner, having held senior positions earlier, fully understood the nature of probation before accepting the terms of appointment.

17. Learned Counsel for the Respondent further submits by way of 2nd Counter Affidavit that after being relieved from the post of Deputy Registrar, the Petitioner secured employment in other universities within Bihar and Jharkhand, but did not disclose



these subsequent appointments before this Court. It is stated that the Petitioner's services in the Respondent University were not confirmed as his performance during probation was found unsuitable and unsatisfactory, leading to a termination simpliciter, which was neither stigmatic nor prejudicial to his future employment prospects. The Respondent further states that the Petitioner thereafter joined JRS University, Ranchi as Finance Officer and subsequently was appointed as Examination Controller in the Bihar Health Sciences University, Patna, pursuant to Notification No. 909(1) dated 10.10.2022 (Annexure-R/11). The Respondent contends that the Petitioner's concealment of these material facts amounts to suppression, which bears directly on the merits of the case.

18. It is further contended by the learned counsel for the respondents that the impugned order is a termination simpliciter, passed in accordance with the Act and the appointment order, and does not cause prejudice to the petitioner. The University asserts that the petitioner's claims of violation of natural justice, arbitrariness, lack of jurisdiction are wholly unfounded and thus deserves to be dismissed with costs.

ISSUES IN QUESTION:



I. Whether the provisions for removal of a probationer as stipulated in the Appointment Letter and the Written Agreement dated 26.03.2014, not being in consonance with Entry 25(2) to 25(5) of the second schedule of the Statute of the University, constitute valid and binding conditions of service, and whether the Petitioner, having accepted and acted upon such terms, is precluded from assailing their legality?

II. Whether, assuming arguendo that the probation clause contained in the Appointment Letter is valid and enforceable, the Respondent-University could have lawfully terminated the Petitioner's services under Clause 4 or Clause 5 of the Appointment Letter?

III. Whether the provisions relating to probation and termination contained in the University Ordinances were validly in force at the time of the Petitioner's termination, and whether such Ordinances were operative notwithstanding the alleged absence of formal approval or publication at the relevant time in terms of the Central Universities Act?

IV. Whether the action of the Vice-Chancellor terminating the Petitioner's services during probation was within the scope of the powers conferred under Section 11(3) of the Central Universities Act, 2009?



V. Whether the Petitioner can claim protection under Article 14 or invoke principles of natural justice in a case of termination during probation, where the order does not disclose any stigma?

VI. Whether, in the event of termination order being held to be illegal, the Petitioner is entitled to claim back wages upon reinstatement, particularly when he has not placed any material on record to establish that he was not gainfully employed during the period of his termination?

FINDINGS:

Issue I: Whether the provisions for removal of a probationer as stipulated in the Appointment Letter and the Written Agreement dated 26.03.2014, not being in consonance with Entry 25(2) to 25(5) of the second schedule of the Statute of the University, constitute valid and binding conditions of service, and whether the Petitioner, having accepted and acted upon such terms, is precluded from assailing their legality?

19. At the outset, it is necessary to consider the statutory position of the Petitioner under the Central Universities Act, 2009. Section 2(i) of the Act defines an “employee” to mean “any person appointed by the University and includes teachers and other staff of the University.” The Petitioner, having been appointed by the



University, clearly falls within this statutory definition and is therefore governed by the provisions of the Act and the Statutes framed thereunder. The conditions of service of such an employee cannot be divorced from, or allowed to travel beyond, the statutory protections embedded in the Act.

20. The Respondent-University seeks to justify the Petitioner's termination by placing reliance on the probation clause contained in the Appointment Letter and the Written Agreement dated 26.03.2014. However, while the Act recognises that every employee shall be appointed under a written contract, such contractual terms cannot confer powers or impose liabilities inconsistent with the statutory framework. It is undisputed that the Act and the Statutes do not create a separate class of “probationer” as distinct from “employee.” The statutory scheme treats all appointed persons as employees unless otherwise specified, and the University cannot, by contractual terminology alone, introduce a new category that carries diminished statutory protection.

21. Section 33 of the Act recognises that every employee shall be appointed under a written contract and that a copy of the contract shall be furnished to the employee. . That statutory recognition of written contracts does not mean, however, that the University may by contract override or negate other statutory



protections. A contract which is inconsistent with or repugnant to a statutory provision must yield to the statute. The settled principle of law is that a private contract cannot supersede a statutory provision and that terms of a contract inconsistent with a statute are unenforceable to the extent of such inconsistency.

22. The most crucial aspect concerns the statutory procedure for removal contained in Entry 25(2) to 25(5) of the 2nd schedule of the Statute of the University. These provisions govern removal of employees and reads as under:

“25(2) Notwithstanding anything contained in the terms of the contract of appointment or of any other terms and condition of service of the employees, the Executive Council in respect of teachers and other academic staff, and the appointing authority in respect of other employees, shall have the power to remove a teacher or a member of the academic staff or other employee, as the case may be, on grounds of misconduct.

25(3) Save as aforesaid, the Executive Council, or as the case may be, the appointing authority, shall not be entitled to remove any teacher, member of the academic staff or other employee except for a good cause and after giving three months' notice or on payment of three months' salary in lieu thereof.



25(4) No teacher, member of the academic staff or other employee shall be removed under clause (2) or clause (3) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

25(5) The removal of a teacher, member of the academic staff or other employee shall take effect from the date on which the order of removal is made:

Provided that where the teacher, member of the academic staff or other employee is under suspension at the time of his removal, such removal shall take effect from the date on which he was placed under suspension.”

23. The contractual clauses enable termination without adherence to the above mandatory requirements. This directly contradicts the procedure mandated under Entry 25(2) to 25(5) of the 2nd schedule of the Statute of the University. It is a settled principle of service jurisprudence that where a statute prescribes a particular mode for exercise of a power, it must be exercised only in that manner or not at all.

24. The legal position is, therefore well-settled that if a contractual term is contrary to a statutory provision, the statutory provision shall prevail and the inconsistent contract clause shall be rendered inoperative. Acceptance of an appointment letter or



execution of an agreement cannot estop an employee from asserting rights conferred by statute. The doctrine of estoppel cannot be invoked to defeat statutory protections, nor can consent validate a clause that is ultra vires. Therefore, even though the Petitioner signed the Agreement, he cannot be deemed to have waived statutory safeguards provided under the Act and the Statutes.

25. This view has been further reiterated in the case of **Kumar Pankaj Anand and Ors. Vs. Central University of Jharkhand and Ors. 2016(2)JLJR387**, relevant paragraph of which is produced herein.

“(III) Section 2(i) of the Act defines 'employee' means any person appointed by the University includes teachers and other staffs of the University. The definition is comprehensive, complete and clear leaving no room of ambiguity. There is no separate definition of probationers in the Act, therefore, there is absolutely no distinction between an officer or an employee or a probationer. As per Statute 25 read with Section 26 (f) of the Act, the services of the employees can only be terminated in the manner prescribed at Clause-2 to 5. Either in case of a termination simplicitor or termination punitive as per the Statute without giving reasonable opportunity of showing cause action



against proposed punishment to be taken, the services of the employees can be terminated for good cause only after giving three months' notice or on payment of three months' salary in lieu, therefore, there has been violation of Statute 25 (3), (4) and (5) of the University Act. Moreover, on perusal of the Statute 12, the powers of Executive Council have been prescribed. Executive Council has no power to discharge the probationer/employee without following the procedure prescribed at Clause 2 to 5 of Statute 25 since the powers of Executive Council being a creature of the Act cannot travel beyond the limits prescribed by the Act.”

[Emphasis Supplied]

26. Therefore it can be inferred that the petitioner being a probationer is not precluded from the status of being an employee and from challenging such action merely because he acted upon the contractual terms, as statutory rights cannot be waved or contracted out of.

Issue II: Whether, assuming arguendo that the probation clause contained in the Appointment Letter is valid and enforceable, the Respondent-University could have lawfully terminated the Petitioner's services under Clause 4 or Clause 5 of the Appointment Letter?



27. For the purposes of a focused analysis, the Court will assume, *arguendo*, that the probation clause in the Appointment Letter is valid and enforceable. Even on that premise, the legality of the termination must be tested against the express terms and conditions of the Appointment Letter itself. A contractual power of termination cannot be exercised arbitrarily; the employer must demonstrate that the pre-conditions and safeguards embedded in the relevant contractual clause have been observed.

28. Even assuming that the Appointment Letter and the Written Agreement dated 26.03.2014 constitute independently valid contractual instruments—*de hors* the statutory protections under the Act and the Statutes—the impugned termination must still withstand scrutiny under the very clauses invoked by the Respondent-University. The Appointment Letter contains two possible routes for termination: Clause 4 and Clause 5. Even if the statutory scheme is momentarily kept aside, the University's action fails to meet the thresholds prescribed under either of these contractual clauses.

29. **Clause 4 of the Appointment Letter** empowers the University to terminate the services of the employee during probation if he is “*found unsuitable for holding the post or upto*



the satisfaction of the competent authority.” The power under Clause 4 is not an unfettered administrative liberty; rather, the finding of unsuitability and (dis)satisfaction must be based on objective material and must reflect application of mind by the competent authority. In the case of **Krishnadevaraya Education Trust and Another v. L.A. Balakrishna** (2001 AIR SCW 253), the Hon’ble Apex Court has clarified its stand on the issue of assigning proper reasons while issuing an order of termination and thus made the observations quoted herein:

“5. There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job, then the employer has a right to terminate the services as a reason thereof. If the termination during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, naturally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not satisfactory, the



employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.

6. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.”

[Emphasis Supplied]

30. Therefore, from the explanation quoted above, it can be inferred that though the reason of unsuitability or dissatisfaction need be elaborated in detail in the termination order, but a mentioning of the same in the termination order would be a requirement. In the present case, the impugned order does not even whisper about the unsuitability or unsatisfactory work of the petitioner being the *raison d’etre* for his termination. Equally, the



Counter Affidavit also fails to articulate any specific grounds explaining the nature of unsuitability or (dis)satisfaction, thereby not assigning any reason regarding his performance, conduct or competence that rendered him unfit to hold the post. The bald explanation offered by the Respondent that assigning reasons may have rendered the order “stigmatic” cannot be accepted as a legally sustainable justification. A vague apprehension of stigma cannot be used to circumvent the requirement of forming, recording, or disclosing a rational basis for termination under Clause 4. Thus, even if Clause 4 were assumed to be valid, the Respondent has not complied with its minimum requirements.

31. Clause 5 of the Appointment Letter contemplates termination without assigning reasons but only upon issuance of 30 days’ prior notice or payment of a sum equivalent to the pay and allowances in lieu of such notice. In the present case, it is undisputed that no 30 days’ notice was issued to the Petitioner, nor was any salary in lieu of notice was tendered to him at the time of termination. There is no material on record to show that the Respondent issued the prescribed thirty days’ notice or tendered/paid salary in lieu thereof at the time of termination. The absence of such compliance is fatal to the Respondent’s contention that termination was effected under Clause 5. Reliance upon a



power to terminate simpliciter under Clause 5 without satisfying its notice or payment requirement, as a precondition, cannot be sustained. The University has not demonstrated fulfilment of any precondition required under Clause 5. Consequently, even the route of “termination simpliciter” provided by Clause 5 could only have been resorted to if the respondent university had given 30 days prior notice or made/tendered payment in lieu thereof at the time of termination. The argument of the respondent university that payment in lieu of 30 days notice should not be construed as condition precedent to termination, is fallacious and contrary to the letter and spirit of Clause 5 of the appointment letter. If giving of thirty days prior notice was/is a condition precedent, then payment in lieu thereof also has to be necessarily construed as being a condition precedent. It is brought to the notice of this court that even till date, payment in lieu of 30 days notice has not been paid to the petitioner.

32. Therefore, whether examined under Clause 4 (termination on ground of unsuitability) or under Clause 5 (termination without reason but with notice), the impugned action fails to satisfy the contractual pre-requisites. The legal burden of establishing that a contractual ground for termination has been validly invoked rests upon the employer. Where the impugned



action is challenged, it was for the Respondent to demonstrate compliance with the terms of Clause 4 (by producing materials showing unsuitability/(dis)satisfactory work upon application of mind) or Clause 5 (by providing service of notice or payment in lieu thereof). On the materials produced before this Court, the Respondent has not discharged that burden in relation to either of the clauses. The University cannot rely upon the Appointment Letter as a source of authority while simultaneously disregarding the safeguards embedded therein. The unilateral termination, unsupported by any finding of unsuitability/(dis)satisfactory work and unaccompanied by statutory or contractual notice or payment in lieu thereof, does not meet even the minimal standards of fairness expected under a contract of employment—much less the more rigorous standards mandated under the University Statutes.

33. Accordingly, even on the hypothetical assumption that the statutory provisions are kept aside, the impugned termination order cannot be sustained even under the contractual regime invoked by the Respondent. In light of the above discussion, this Court holds that the termination order is bad for not having been passed in strict accordance of the requirements of either Clause 4 or 5 of the appointment letter and thus it cannot be sustained.



Issue III: Whether the provisions relating to probation and termination contained in the University Ordinances were validly in force at the time of the Petitioner's termination, and whether such Ordinances were operative notwithstanding the alleged absence of formal approval or publication at the relevant time in terms of the Central Universities Act?

34. It must be recorded at the threshold that this Court has found the impugned termination to be legally unsustainable on the grounds already articulated above. Having arrived at the above conclusion, now the controversy concerning the precise date on which the Ordinances came into force becomes only of academic interest, which is being kept open for consideration in an appropriate case in future.

35. Notwithstanding the foregoing, it must be emphasized that even on the hypothesis that the Ordinances were validly in force on the date of termination, the Respondent's action must still conform to the Statute and the principles of fairness inherent in public employment. Hence the question of operative date of the Ordinances is collateral to, and does not detract from, the Court's finding that the termination was legally unsustainable for the reasons already recorded herein above.



Issue IV: Whether the action of the Vice-Chancellor terminating the Petitioner's services during probation was within the scope of the powers conferred under Section 11(3) of the Central Universities Act, 2009?

36. While considering the emergency powers of the Vice-Chancellor, It is necessary to read Section 11(3) in its proper statutory context. The provision confers on the Vice-Chancellor an extraordinary, but qualified, power to take immediate action in exceptional circumstances where the Vice-Chancellor is of the opinion that such immediate action is necessary. The power is therefore residuary and emergency in character; it is not intended to supplant the normal statutory machinery for appointment, confirmation or removal of employees which is set out elsewhere in the Act and the Statutes. Any exercise of power under Section 11(3) must be justified by circumstances of immediacy and exigency and must be confined strictly to the object and limits of the power so conferred.

37. The textual requirement that the Vice-Chancellor must be "*of the opinion that immediate action is necessary*" is not a mere formalism; it carries an objective content. The exercise of the power must be supported by facts warranting a conclusion that immediate action was necessary to meet an unforeseen or urgent



situation affecting the administration or functioning of the University. Where the Vice-Chancellor takes action under Section 11(3), the record should disclose the factual basis for the satisfaction—either in the order itself, or in contemporaneous administrative material or in clear averments in the counter-affidavit—so that judicial scrutiny of the legality and propriety of the exercise is possible.

38. On the material placed before this Court, the Respondent has not furnished any adequate explanation of the exigency said to have compelled immediate action. The counter-affidavit does not set out facts which would indicate a situation of immediate peril, emergency, or imperative administrative need which could not have awaited the ordinary course of consideration by the competent authority(Executive Council). Bare assertions of unsatisfactory performance or an omnibus statement that the employee was “unsuitable” do not meet the threshold required to justify the extraordinary invocation of Section 11(3). In the absence of such factual foundation, the purported satisfaction of the Vice-Chancellor remains an ipse dixit, incapable of sustaining an emergency exercise of power.

39. The consequence of such a lacuna is that the exercise of Section 11(3) in the present case was beyond the statutory



power conferred on the Vice-Chancellor. Where a delegated or emergency power is exercised without the factual predicate required by the statute, the action is illegal and void ab initio. The doctrine is well settled that subsequent ratification by the Executive Council cannot validate an act which was originally void for want of jurisdiction or which constitutes an arbitrary and colourable exercise of power. If the initial act suffers from jurisdictional defect or is vitiated by non-compliance of mandatory preconditions, later approval by a statutory body cannot confer legality upon that which was void ab initio.

40. The administrative guidance issued to Vice-Chancellors of Central Universities further reinforces the limits upon emergency powers. The Office Memorandum dated 11 June 2001 (Annexure 15 series of the main writ application), in particular Clause 2(ii), stated herein *“routine matters like creation of teaching and academic posts, appointment to the said posts, finalizing recruitment procedures, promotions under Merit Promotion Schemes/ Career Advancement Schemes, upgradation of posts making them personal to the incumbents should invariably be placed before the authorities ordinarily empowered to take decisions in such cases. Emergency powers should not be exercised by the Vice-Chancellors in such cases”* explicitly advises



that emergency powers ought not to be used in relation to the creation of posts, appointments to such posts or finalising recruitment procedures. By parity of reasoning, routine terminations and regular personnel decisions are not matters for emergency action as it would be personal to the person holding the post. The Memorandum therefore underscores that the Vice-Chancellor's emergency authority is not a licence to bypass prescribed procedures for appointment or termination, and that institutional practice and administrative propriety require restraint in invoking Section 11(3) for personnel administration.

41. In the case of **Dilip Kumar Sarkar Vs. The University of North Bengal and Ors.** W.P. No. 7892(W) OF 2010, the High Court of Kolkata held that:

“3. Section 10 of the Act deals with powers and duties of the Vice-Chancellor and sub-section (6) of Section 10 vests in such authority certain emergency powers. This provision stipulates:-

The Vice-Chancellor may take on behalf of the University such action as he may deem expedient in any matter which, in his opinion, is either urgent or of an emergent nature and shall report the same for confirmation at the next meeting of the authority or body which in the ordinary course, would have dealt with the matter:



provided that if the action taken by the Vice-Chancellor is not approved by the authority or body concerned, the matter shall immediately be referred to the Chancellor whose decision thereon shall be final.

4. It has been contended on behalf of the petitioner that there was no urgent or emergent situation which warranted passing of the order of suspension by the respondent no. 3, as under ordinary circumstances such power was to be exercised by the Executive Council only. The case of the petitioner is that the respondent no. 3 never applied his mind for the purpose of formation of opinion as to whether any situation of urgent or emergent nature was there warranting exercise of such emergency power. The other main ground on which the impugned order has been challenged is that instead of passing the order on application of his own mind, the respondent no. 3 had passed the order on external dictat. Argument of the petitioner on this ground has been that instead of applying his own mind, the respondent no. 3 acted as per the direction of the learned Chancellor in this matter.”

[Emphasis Supplied]

42. Further in paragraph 23 of this case, a detailed explanation on the emergency powers of the Vice-Chancellor has been made which is quoted as under:



“23. In a case relating to exercise of similar power under Section 9(6) of the Calcutta University Act, 1979, Sakila Begum Vs. State of West Bengal (supra), an Hon'ble Single Judge of this Court examined the condition precedent for exercise of such power and held:-

"From a perusal of section 9(6) of the Act it is clear that power has been conferred upon the Vice-Chancellor to take action on behalf of the University another matter which in his opinion' is either urgent or of an emergent nature calling for immediate attention. However, power initiating such action there must be appraisal of facts and on subjective satisfaction there should be formation of belief for arriving on an opinion. Such exercise of formation of opinion must be on the basis of facts so that, if called for, it can be demonstrated on the records that there was a definite application of mind to justify that there indeed was an emergent or urgent has been necessitating action under Section 9(6) of the Act. The approach in such a situation must be judicious. That, in my view, is the purport of the words 'in his opinion' so that one may know the reasons that had prompted the Vice- Chancellor to initiate action in exercise of emergency powers conferred under the Act. In the absence of any record of formation of opinion, action in exercise of powers conferred under the said sub Section



can hardly be justified. In fact, the legislature had consciously used the words 'in his opinion' to check possible misuse or abuse of power”

43. Applying these principles to the facts of the present case, the Vice-Chancellor's order terminating the Petitioner's services during probation cannot be regarded as falling within the lawful ambit of Section 11(3). There is no adequate factual narration of exigent circumstances; the Office Memorandum indicates that appointment and related decisions are precisely the kinds of matters the Vice-Chancellor should not treat as emergency business; and the statutory scheme vests removal powers in the Executive Council or the appointing authority subject to procedural safeguards. The Vice-Chancellor's truncated exercise of power, therefore, exceeded the statutory limits and was an improper use of Section 11(3).

44. Finally, it bears emphasising that where an administrative action is void ab initio for want of jurisdiction, subsequent endorsement—whether by internal memorandum, by a committee, or by the Executive Council—cannot retrospectively confer validity. The Executive Council's subsequent approval, if any, cannot cure the vice of the original order which lacked the statutorily required factual foundation and which transgressed the



limitations set out in the Act, the Statutes and the administrative guidance. For these reasons the termination is vitiated and must be treated as legally ineffectual.

45. Further in the case of **MARATHWADA UNIVERSITY VS. SESHRAO BALWANT RAO CHAVAN** (1989) 3 Supreme Court Cases 132, the issue of ratification is dealt in detail, relevant paragraphs of which are produced herein:

“25. By this resolution, we are told that the Executive Council has ratified the action taken by the Vice-Chancellor. Ratification is generally an act of principal with regard to a contract or an act done by his agent. In Friedman's Law of Agency (5th Edn.) Chapter 5 at p. 73, the principle of ratification has been explained:

"What the agent' does on behalf of the 'principal' is done at a time when the relation of principal and agent does not exist: (hence the use in this sentence, but not in subsequent ones, of inverted commas). The agent, in fact, has no authority to do what he does at the time he does it. Subsequently, however, the principal, on whose behalf, though without whose authority, the agent has acted, accepts the agent's act, and adopts it, just as if there had been a prior authorisation by the principal to do exactly what the agent has done. The interesting point, which has given



rise to considerable difficulty and dispute, is that ratification by the principal does not merely give validity to the agent's unauthorised act as from the date of the ratification: it is antedated so as to take effect from the time of the agent's act. Hence the agent is treated as having been authorised from the outset to act as he did. Ratification is 'equivalent to an antecedent authority'."

26. *In Bowstead on Agency (14th Edn.) at p. 39 it is stated:*

"Every act whether lawful or unlawful, which is capable of being done by means of an agent (except an act which is in its inception void) is capable of ratification by the person in whose name or on whose behalf it is done.... The words 'lawful or unlawful', however, are included primarily to indicate that the doctrine can apply to torts. From them it would follow that a principal by ratification may retrospectively turn what was previously an act wrongful against the principle, e.g. an unauthorised sale, or against a third party, e.g. a wrongful distress, into a legitimate one; or become liable for the tort of another by ratifying."

27. *These principles of ratification, apparently do not have any application with regard to exercise of powers conferred*



under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is ab initio void and cannot be ratified.”

[Emphasis Supplied]

46. Therefore it can be concluded that the Vice-Chancellor's action purporting to terminate the Petitioner's services under Section 11(3) does not, on the material before this Court, fall within the ambit of the emergency power conferred by that provision. The exercise of power was without the requisite factual basis, was contrary to administrative guidance limiting use of emergency powers for personnel decisions, and therefore was an illegal exercise of authority. The termination is accordingly void ab initio and cannot be validated by subsequent approval of the Executive Council.

Issue V: Whether the Petitioner can claim protection under Article 14 or invoke principles of natural justice in a case of termination during probation, where the order does not disclose any stigma?

47. It is a settled principle of service jurisprudence that a probationer does not enjoy the same security of tenure as a confirmed employee. The employer retains the authority to assess the suitability of a probationer during the prescribed period, and



where the termination is founded on overall unsuitability or general dissatisfaction with performance, and the order does not cast any stigma or make imputations of misconduct, the termination is ordinarily regarded as termination simpliciter.

48. Jurisprudence of the Hon'ble Supreme Court recognises that in cases of termination simpliciter during probation, the requirement of a prior notice or opportunity of hearing is not attracted, provided the action does not carry a punitive flavour or is not founded on allegations which may visit the probationer with civil consequences. In such cases, the doctrine of natural justice does not automatically apply, as the termination is conceptualised as a non-punitive cessation of a probationary engagement.

49. In the present case, the termination order does not set out any allegations, charges, or adverse findings against the Petitioner. It merely records cessation of services during probation without attributing misconduct. The counter affidavit filed by the Respondent also refrains from alleging any specific act of delinquency or misconduct; rather, it proceeds on the footing of unsatisfactory performance, which, if accepted as the basis, still falls within the domain of assessment of suitability during probation.



50. In such circumstances, the Petitioner cannot successfully invoke the protection of Article 14 or principles of natural justice solely on the ground that no opportunity of hearing was afforded. The law does not mandate a pre-decisional hearing where the action is administrative in nature, non-punitive in character and does not visit the employee with stigma.

51. However, while the absence of a hearing does not by itself render such an order illegal, the action must still withstand constitutional scrutiny under Article 14. The employer cannot act capriciously, discriminatorily, or in a manner that amounts to colourable exercise of power. If the foundation for termination is irrelevant or extraneous, or if the exercise of power is outside the statutory framework, the Court may still intervene. But the non-grant of hearing, by itself, in a case of non-stigmatic termination of a probationer, does not constitute a violation of natural justice.

Issue VI: Whether, in the event of termination order being held to be illegal, the Petitioner is entitled to claim back wages upon reinstatement, particularly when he has not placed any material on record to establish that he was not gainfully employed during the period of his termination?

52. It is well established that the grant of back wages upon reinstatement is a discretionary equitable relief which hinges



on the facts of each case. Courts consider ,inter alia, whether the termination was wrongful, whether the claimant mitigated his loss by obtaining other employment, whether the public exchequer will be unduly burdened, and whether the claimant has acted with clean hands. The primary burden of proof to show entitlement to back wages rests on the petitioner; conversely, where the respondent pleads and proves that the petitioner was gainfully employed during the relevant period, that fact is material and may reduce or extinguish the claim for back wages. The principle of mitigation of damages requires an injured party to take reasonable steps to reduce his loss; earnings from alternative employment are taken into account in fixing compensatory relief.

53. If a petitioner, during the period between unlawful termination and reinstatement, has secured employment and received remuneration, the courts normally take that into account. Where the alternative employment is full-time and remunerative, courts frequently deny back wages in full, or award only the difference between the salary the petitioner would have drawn in the original employment and the salary actually earned in the alternative employment, depending on the equities. The rationale is that back wages are compensatory for the loss actually suffered; if the petitioner has been compensated by gainful employment, he



has not suffered the full wage-loss that back wages are designed to redress.

54. In the present matter the petitioner has not produced any record to demonstrate that he remained unemployed or without income after he was relieved from the Respondent-University. On the other hand, the Respondent has produced material in the form of its counter affidavit and annexures including Notification No. 20/2022-909(1) dated 10.10.2022 which indicate that the petitioner obtained employment as Finance Officer at JRS University, Ranchi and subsequently as Controller of Examinations at Bihar Health Sciences University, Patna. Once the Respondent has placed credible material on record indicating gainful employment, the evidentiary onus shifts to the petitioner to controvert or explain those documents. The petitioner's failure to rebut or clarify these factual averments is a significant factor in the exercise of judicial discretion.

55. The Hon'ble Apex Court in the case of ***National Gandhi Museum vs. Sudhir Sharma*** (2021) 12 SCC 439 has made the following observations:

"In Talwara Coop. Credit & Service Society Ltd.7, this Court has held that the fact whether an employee after dismissal was gainfully employed is within his special knowledge and



therefore, considering the principles laid down in Section 106 of the Evidence Act, 1872, the burden is on the employee to come out with a case that he was not gainfully employed during the relevant period. We must note that whether such burden is discharged or not is an issue to be decided in the facts of each case. The issue has to be decided by taking into consideration the entire material on record.”

[Emphasis Supplied]

56. Close on the heels of **National Gandhi Museum** (Supra) came another seminal decision on reinstatement and entitlement of back wages by the Hon’ble Apex Court in the case of **Maharastra State Road Transport Corporation vs Mahadeo Krishna Naik** 2025 (2) PLJR 120 (SC), relevant paragraphs of which are quoted herein:

“42. There have been decisions of this court rendered thereafter where a shift in approach on awarding full back wages is clearly discernible. However, a Coordinate Bench of this Court in Deepali Gundu Surwase (supra) considered a dozen of precedents on award of back wages upon reinstatement . paragraphs 13 and 14). Speaking through Hon'ble G.S. Singhvi, J. (as His Lordship then was), the legal position was neatly summed up in the following words:



"22. The very idea of restoring an employee to the position which he held before dismissal or or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi- judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his



entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

38. The propositions which can be pulled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject the rider that while deciding the issue back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages



is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/ workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”

[Emphasis Supplied]

57. The other aspect of this issue has also been dealt by The Hon'ble Apex Court in the same case of **Maharashtra State Road Transport Corporation** (Supra), and the Court made the following observations:

“44. There is one other aspect that would fall for consideration of the court. In certain decisions, noticed in *Deepali*



Gundu Surwase (supra), it has been opined that whether or not an employee has been gainfully employed is within his special knowledge and having regard to Section 106 of the Evidence Act, 1872, the burden of proof is on him. What is required of an employee in such a case? He has to plead in his statement of claim or any subsequent pleading before the Industrial Tribunal/Labour Court that he has not been gainfully employed and that the award of reinstatement may also grant him back wages. If the employee pleads that he was not gainfully employed, he cannot possibly prove such negative fact by adducing positive evidence. In the absence of any contra-material on record, his version has to be accepted.”

[Emphasis Supplied]

58. From the above discussions, it is clear that the basic criteria for back wages has been been reiterated in a catena of judgments by the Hon’ble Apex Court. In the present case, the petitioner’s omission to disclose details of subsequent employment to this Court amounts to suppression of material facts bearing directly on his claim for monetary relief. Courts will not ordinarily reward a litigant who approaches the Court with incomplete or misleading material. Where concealment of material facts that bear on entitlement to relief is shown, this operates strongly against the



grant of back wages. The duty to make full and candid disclosure is particularly weighty in employment litigation where the respondent's financial liability is sought to be fixed. In view of the settled principle that the burden to disclose and prove absence of gainful employment rests upon the claimant, and further considering the suppression of material facts by the Petitioner, this Court finds no equitable basis to award back wages.

59. Considering that (a) the petitioner has failed to place on record evidence of non-employment or of income shortfall, (b) the respondent has produced documentary material of the petitioner's subsequent appointments, and (c) the petitioner did not explain or clarify these matters despite having the opportunity, it would be inequitable to award back wages. At best, the petitioner ought to have produced salary particulars from his intervening employments to seek a differential award; he has not done so. The balance of equities, therefore, disfavors an award of back wages in his favour.

RELIEFS:

60. In view of the findings recorded on all the issues, and for the reasons discussed hereinabove, this Court is of the considered view that the impugned action of the Respondent-



University cannot be sustained in law. Accordingly, the following reliefs are granted:

61. The impugned order of termination contained in the office order no. 138/15 dated 18.09.2015 issued against the Petitioner is hereby set aside and quashed as being unsustainable in law, having been passed without authority, without compliance with the statutory framework, and in derogation of Entry 25(2) to 25(5) of the 2nd schedule of the Statute of the University as well as the mandate and limitations inherent under Section 11(3) of the Central Universities Act, 2009. For the reasons discussed, the Court finds that the impugned action suffers from arbitrariness, lack of jurisdiction, and violation of the governing statutory framework.

62. The Respondent-University is directed to reinstate the Petitioner forthwith to the same post which he was holding at the time of the impugned termination if the said post is vacant, or to an equivalent post, in terms of the admission made by the Respondent in the Third Supplementary Counter Affidavit. Such reinstatement shall be effected within four weeks from the date of receipt/ communication of this judgment. The Petitioner shall be entitled to continuity of service for all consequential purposes, including seniority, pensionary and



notional service benefits, if admissible, to the petitioner, except monetary arrears.

63. This Court is not inclined to grant back wages to the Petitioner for the period between termination and reinstatement for the reasons already discussed above.

64. It is clarified that although back wages are denied, such denial shall not affect the Petitioner’s continuity of service, which is granted on the basis of the illegality of the termination order and not on the basis of equitable considerations relating to the Petitioner’s subsequent employment. Any consequential benefits accruing from reinstatement, save and except back wages, shall be computed and extended to the Petitioner by the Respondent-University within 4 weeks from the date of his reinstatement.

65. The petition is accordingly allowed in the above terms. All pending IAs, if any, shall stand disposed of. There shall be no order as to costs.

(Alok Kumar Sinha, J)

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