

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10496 of 2024

=====

Sanjay Kumar Son of Maheshwar Chaudhary, Resident of Jai Maharaja
Works, Kalambagh Chowk, P.S.- Kazi Mohammadpur, Muzaffarpur,
District-
Muzaffarpur, Bihar.

... ... Petitioner.

Versus

1. The State of Bihar.
2. The Chancellor of the Universities, Bihar, Rajbhawan, Patna.
3. The Additional Chief Secretary, Education Department, Government of Bihar, Patna.
4. The Principal Secretary to Governor-cum-Chancellor, Rajbhawan, Patna.
5. The Vice Chancellor, Bhim Rao Ambedkar Bihar University, Muzaffarpur, Bihar.
6. The Registrar, Bhim Rao Ambedkar Bihar University, Muzaffarpur, Bihar.
7. Dr. Aprajita Krishna, the Registrar, Bhim Rao Ambedkar, Bihar University, Muzaffarpur, Bihar.

... ... Respondents.

=====

Acts/Sections/Rules:

- *Sections 7, 15 of Bihar State University Act, 1976*

Cases referred:

- *Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. and Ors., reported in AIR 1987 SC 1023*
- *Radha Krishan Industries vs. State of Himachal Pradesh and Ors., reported in AIR 2021 SC 2114*
- *Mohan Singh and Ors. vs. International Airport Authority of India and Ors. reported in (1997) 9 SCC 132*
- *Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41*
- *Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh & Ors, (2015) 13 SCC 722*
- *Whirlpool Corporation vs Registrar of Trademarks, Mumbai reported in (1998) 8 SCC 1*

Writ petition - filed to quash the notification whereby petitioner was removed from the post of the Registrar of a University and a respondent

was appointed the Registrar despite the fact that she did not possess the requisite qualification as prescribed under the law for holding the post of the Registrar

Held - Appointment as well as termination of post of registrar has to be done in a prescribed procedure and it cannot be an act of haste under the shadows of opaqueness and subjectivity. (Para 28)

The court find no force in the contention of the respondents that the petitioner was transferred and, therefore, there is no requirement of observing the principles of natural justice. The obvious reason for rejection of this contention of the respondents flows from Section 8 and Section 15(3) (c) of the Bihar State University Act. (Para 29)

Petitioner has been terminated from the post of Registrar on the basis of evaluation of his performance and such act cannot be shielded in the usage of innocuous phrases like relieving or transfer and it does not definitely become a case of transfer under Section 15(3)(c) of the Bihar State University Act, 1976. (Para 30)

If there is a prescribed process for termination of any person from the post of Registrar, then such process cannot be simply brushed aside by saying that this procedure is not applicable on the orders made by the Chancellor as the process is applicable for recommendation made by the Vice Chancellor. If this is to be accepted then the process prescribed will be reduced to an eye wash which can be used and negated at convenience. Another reason to hold this process as mandatory is that the entire process is meant to facilitate the Chancellor to reach to a conclusion that if a person can be terminated from the post of registrar etc after considering the statement of charges and explanation along with supporting material to ensure that an informed decision is made which shall also provide an efficacious remedy to the aggrieved to approach Chancellor against such recommendation by showing faults in the material presented before him, if there is any. However, if this process is held to be not applicable on the orders made by Chancellor, then it will be open to misuse and the aggrieved person will be left remediless. (Para 34)

Relieving the petitioner from the post of Registrar of the University amounts to termination in total disregard to the procedure provided therein terms of letter issued by Chancellor's office and as such is bad in law as well as the appointment of respondent in spite of her being ineligible in flagrant violation of the statutory mandatory requirement as contained in Section 15 of Bihar State University Act, 1976 is unsustainable in eyes of law. (Para 41)

Writ petition is allowed. (Para 42)

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10496 of 2024

Sanjay Kumar Son of Maheshwar Chaudhary, Resident of Jai Maharaja Works, Kalambagh Chowk, P.S.- Kazi Mohammadpur, Muzaffarpur, District-Muzaffarpur, Bihar. Petitioner.

Versus

- 1. The State of Bihar.
- 2. The Chancellor of the Universities, Bihar, Rajbhawan, Patna.
- 3. The Additional Chief Secretary, Education Department, Government of Bihar, Patna.
- 4. The Principal Secretary to Governor-cum-Chancellor, Rajbhawan, Patna.
- 5. The Vice Chancellor, Bhim Rao Ambedkar Bihar Uniiversity, Muzaffarpur, Bihar.
- 6. The Registrar, Bhim Rao Ambedkar Bihar University, Muzaffarpur, Bihar.
- 7. Dr. Aprajita Krishna, the Registrar, Bhim Rao Ambedkar, Bihar University, Muzaffarpur, Bihar. Respondents.

Appearance :
For the Petitioner : Mr. Dhananjay Kashyap, Advocate
Mr. Gyan Shankar, Advocate
For the State : Standing Counsel-4
For the respondent nos.2 & 4 : Mr. Janardan Prasad Singh, Sr. Advocate
Mr. Rajiv Ranjan Kumar Pandey, Advocate
For the B.R.A.B. University : Mr. Bindhayachal Rai, Advocate
For the respondent no.7 : Mr. Santosh Kumar, Sr. Advocate
Mr. Madhurendra Sharma, Advocate
Mr. Pawan Kumar, Advocate
Mr. Utsav, Advocate

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
C.A.V. JUDGMENT

Date : 14-02-2025

Heard learned counsel for the parties.

- 2. The present writ petition has been filed seeking the following reliefs:



“(i) For issuance of appropriate writs order or directions by this Hon’ble High Court for quashing of the notification as contained in Memo No. BSU (Registrar)-06/2023-948/GS(I) dated 18.06.2024 issued under the signature of the Respondent No. 4 whereby and whereunder Hon’ble the Chancellor in exercise of power vested in him under Section 15 of the Bihar State University Act, 1976 (as amended up to date) has appointed the Respondent No. 7 against the post of the Registrar of the B.R.A. Bihar University despite the fact that she does not possess the requisite qualification as prescribed under the law for holding the post of the Registrar of the Bhimrao Ambedkar Bihar University, Muzaffarpur and has further removed the petitioner from the post of the Registrar, Bhimrao Ambedkar Bihar University, Muzaffarpur without following the Principles of Natural Justice and without any notice to the petitioner and without following the guidelines issued in this respect by the Governor’s Secretariat vide Memo No. –BSU-45/2019-844/GS (I) dated 27.05.20 (Annexure-P/11).

(ii) For issuance of appropriate writs order or directions for quashing of the notification as contained in Memo No. B/1612 dated 19.06.24 issued under the signature of new incumbent (i.e. Dr. Aprajita Krishna) being the Registrar of the Bhimrao Ambedkar University, Muzaffarpur by which it has been notified that the Respondent No.



7 has assumed the charge of the office of the Registrar of the Bhimrao Ambedkar Bihar University, Muzaffarpur with effect from the afternoon of 19th of June 2024, on the ground that the Respondent No. 7 does not possess the basic and requisite qualification for holding the post of the Registrar and her appointment against the post of the Registrar of the B.R.A. Bihar University not in consonance with the stipulations and procedures mentioned in Section 15 Bihar State University Act, 1976 (as amended up to date).

(iii) Further, for issuance of appropriate writs, orders or directions for quashing of the office order as contained in Memo No. B/1620 dated 20.06.24 issued under the signature of the Registrar of B.R.A. Bihar University, Muzaffarpur whereby and whereunder the Respondent No. 7 without any jurisdiction of power has relieved the petitioner from the post of the Registrar of the B.R.A. Bihar University, Muzaffarpur.

(iv) And, the appropriate writs, orders or directions may be issued by this Hon'ble Court for quashing of the office order as contained in Memo No. B/1620 dated 20.06.24 issued under the signature of the Registrar of B.R.A. Bihar University, Muzaffarpur whereby and whereunder after being illegally relieved from the post of the Registrar of the University, totally in malafide, illegal and arbitrary manner the petitioner has been posted at R.N. College, Hazipur in place of being reverted to



his parent and original place of posting ie. University Department of Economics, Social Science Block, BRA Bihar University, Muzaffarpur

(v) And further appropriate writs, orders and directions may be issued by this Hon'ble High Court to the office of the Chancellor of the Universities of Bihar, Rajbhawan, Patna (the Respondent No. 2 and 4) to produce the original related records before this Hon'ble Court for ascertaining the fact that on what grounds the petitioner has been removed from the post of the Registrar without giving any notice to him and whether the due process of law as mentioned in Section 15 and Section 10 of the Bihar State University Act and the provisions under related statutes and law as propounded by the Court of Law have been followed in the appointment of the Respondent No. 7 against the post of the Registrar and if the same is found to be illegal and alien to law then in that case the whole process of removal of the Petitioner from the post of the Registrar of the B.R.A. Bihar University, Muzaffarpur and the appointment of the Respondent No. 7 against the post of the Registrar the B.R.A. Bihar University, Muzaffarpur may be set aside and quashed and in consequence the Petitioner may be reinstated against the post of the Registrar of the B.R.A. Bihar University, Muzaffarpur.

(vi) And any other appropriate writs, order or directions may be issued by this Hon'ble High



Court under the given facts of the case.”

3. The short facts of the present case are that the petitioner was appointed against the post of the Lecturer (i.e. Assistant Professor) on 20.11.2002. He was promoted to the rank of Reader (Associate Professor) w.e.f. 28.06.12 and thereafter was promoted to the rank of Professor w.e.f. 28.06.2020. Thereafter, the petitioner was appointed as the Registrar, B.R.A. Bihar University, Muzaffarpur vide Notification issued by the Governor's Secretariat, Bihar, as contained in Memo No. BSU (Registrar) 27/2017-815/GS(I) dated 05.06.2023. The petitioner started to discharge his duties as the Registrar of the B.R.A. Bihar University (hereinafter referred to as the 'University') to the satisfaction of the authorities concerned. Suddenly, without any prior notice or hearing the petitioner, respondent no. 4 issued a notification, as contained in Memo No. -bsu (registrar)-06/2023-948/gs (i) dated 18.06.2024, by which the respondent no. 7 was appointed as the Registrar. On 19.06.2024, the respondent no. 7 assumed the charge of the office of the Registrar of the University. On 20.06.2024, an office order, as contained in Memo No. B/1620 dated 20.06.2024, was issued by respondent no. 7 whereby the petitioner was relieved from the post of Registrar of the University, and was posted at R.N. College, Hajipur with



immediate effect.

4. Mr. Dhananjay kashyap, learned counsel for the petitioner submits that the petitioner was terminated from the post of Registrar of the University vide memo no. B/1620 dated 20.06.2024 in the guise of relieving him from the post of Registrar. He further submits that the Memo No. B/1620 dated 20.06.2024 has been issued in complete violation of principles of natural justice and flagrant violation of prescribed procedure for termination of any person from the post of registrar as contained in Letter No. BSU(VC)-45/2019 dated 27.05.2020.
5. Learned counsel for the petitioner has drawn the attention of this court to the Letter No. BSU(VC)-45/2019 dated 27.05.2020 which reads as follows,

It has been noticed that proposals are received in the Chancellor's Secretariat from Vice Chancellor's for termination of appointment of Officers of Universities which has been appointed with the approval of the Hon'ble Chancellor.

In this regard, I am directed to inform that the Hon'ble Chancellor, after due consideration and in exercise of the powers vested in him under-section 9(7)(ii) of Bihar State University Act, 1976 and sub-section (7) of section 10 of Patna University Act, 1976 (as amended up-to-date) has been pleased to order, in the interest of natural justice, that if the Vice-Chancellor of a University in Bihar is not satisfied with the working of an Officer in his / her University who has been appointed with the



approval of the Hon'ble Chancellor, for instance the Financial Adviser, Registrar, Finance Officer etc. and considers the termination of the appointment of such person to be in the academic or administrative interest of the University, he / she should first seek an explanation / show-cause from the said Officer along with a statement of charges against the Officer and provide him/her a reasonable time to submit the explanation / show-cause, which should normally not be less than 7 days (unless it is a matter of great urgency). Thereafter, if the Vice-Chancellor is not satisfied with the explanation / show-cause submitted by the Officer, he / she may send the proposal regarding termination of appointment of the Officer along with his / her own comments on the explanation / show-cause submitted by the Officer and clear recommendation regarding action to be taken for kind orders of the Hon'ble Chancellor.

6. Learned counsel for the petitioner draws attention of this Court to the aforesaid letter to submit that a detailed process for removal of any person from the post of Registrar is provided which mandates adherence to the principles of natural justice by issuance of show cause and providing a reasonable time for submission of explanation, however, in the case of termination of the petitioner, it is admitted that no prior notice, show cause notice or no opportunity of hearing was ever issued to the petitioner prior to passing of order of removal of petitioner from the post of Registrar, therefore, the impugned order dated 20.06.2024 is not in consonance to the



procedure laid down in Letter No. BSU(VC)-45/2019 dated 27.05.2020 and it is also violative of principles of natural justice.

7. Mr. Dhananjay kashyap, learned counsel for the petitioner further submits that the appointment of respondent no. 7 at the post of Registrar is in complete violation of Section 15 of Bihar State University Act, 1976 (hereinafter referred to as the 'University Act'). He further submits that the respondent no. 7 does not possess requisite qualification for appointment to the post of Registrar. To buttress his submission, learned counsel of the petitioner submits that Section 15 of the University Act provides a panel of names be sought from the State Government, Central Government, University Grants Commission or any University for the post of Registrar, but, in the instant case, the Hon'ble Chancellor has not sought for any names as mandated under Section 15 of the University Act, and thus the appointment is contrary to the process as mandated under of Section 15 of the University Act.
8. Learned Counsel for the petitioner draws attention of this Court to the Letter dated 31.12.2006 issued by Ministry of Human Resource Development, Department of Higher Education, Government of India and Resolution No. 15/डी 1-



01/09 अंश - ii उ० शि० 2693 dated 27.08.2009 issued by Human Resource Development Department, Government of Bihar to submit that the eligibility criteria as mandated for the post of registrar is “*at least 5 years of experience as assistant professor in the agp of rs. 7000 and above or with 8 years of service in the agp of rs. 8000 and above including as associate professor with experience in educational administration*”, however, the respondent no. 7 has been appointed despite not fulling the above criteria.

9. Learned counsel for the petitioner has submitted that after illegally removing the petitioner from the post of Registrar of the University, the petitioner has been posted at R. N. College, Hajipur, which is almost 60 Kms away from the headquarters and from his original place of posting at the University Department of Economics, B.R.A. Bihar University, Muzaffarpur, being the original place of posting of the petitioner since 2010, which is contrary to the usual practice followed by the University. It has been further submitted that the posting of the petitioner at R. N. College, Hajipur is devoid of logic and reflective of bias as immediately after the posting of the petitioner at R. N. College, Hajipur, on 20.07.2024, two teachers have been



appointed in University Department of Economics, who are junior to the petitioner. Thus, on the one hand, the petitioner has been removed and, on the other hand, two new persons have been appointed.

10. A counter affidavit has been filed on behalf of the respondent nos. 2 and 4. Mr. Janardan Prasad Singh, learned senior counsel assisted by Mr. Rajeev Ranjan Pandey, learned Advocate, appearing on behalf of the respondent nos. 2 and 4, i.e. the Hon'ble Chancellor, has opposed the prayer of the petitioner essentially on two grounds.

11. Raising his first ground, Mr. Janardan Prasad Singh, learned senior counsel submits that the writ petition is thoroughly misconceived as the petitioner has not been "terminated" whereas the petitioner has been "transferred" by virtue of powers vested under Section 15(3)(c) of the University Act and as such it has no impunity attached to it. Advancing his second ground, he further submits that the order of transfer has been made by the Hon'ble Chancellor after the performance appraisal of the petitioner as well Registrars of other Universities of Bihar and it was found desirable to replace the Registrars in academic and administrative interest of the Universities and, therefore, the



petitioner was relieved from the post of the Registrar.

12. A counter affidavit has been filed on behalf of the Respondent No. 5 and 6, i.e. the University. Mr. Bindhyachalrai, learned counsel appearing on behalf of respondent nos. 5 and 6, i.e. the University submitted that the University has acted in light of the directives issued by the Governor's Secretariat as contained in the Memo No. 948 dated 18.06.2024. He has further submitted that the guidelines as contained in the Letter No. BSU(VC)-45/2019 dated 27.05.2020 is not applicable in this case as the said guidelines are for the cases where a proposal for termination of any person is issued from the office of Vice Chancellor, whereas in instant case the respondent no. 7 has been appointed directly by the Hon'ble Chancellor himself, therefore, there is no violation of principles of natural justice.
13. A counter affidavit has been filed on behalf of the Respondent No. 7, i.e. the incumbent Registrar. Mr. Santosh Kumar, learned senior counsel assisted by Mr. Pawan Kumar, learned Advocate appearing on behalf of the Respondent No. 7 opposed the prayer of the Petitioner.
14. Mr. Santosh Kumar, learned senior counsel assisted by Mr. Pawan Kumar, learned Advocate appearing on behalf of



the Respondent No. 7 submitted that the guidelines, as contained in Letter No. BSU(VC)-45/2019 dated 27.05.2020, is not applicable to the case of petitioner as the said guidelines are for Vice Chancellor and the same is not applicable while exercising power under Section 15 of the Bihar State University Act, 1976 by the Hon'ble Chancellor.

15. He further submitted that the Respondent No. 7 possess an excellent academic record and is earning gross pay of Rs. 1,01,544 which is higher than AGP of Rs. 7000 thus the eligibility of the Respondent No. 7 cannot be questioned. He has further submitted that the eligibility criteria as contained in the letter dated 31.12.2008 is for the direct recruitment and thus not applicable in the case of the appointment of the Respondent No. 7.

16. He further submitted that the appointment of the Respondent No. 7 has been done in consonance with Section 15 of the Bihar State University Act, 1976 and as such request for panel is not mandatory for such appointment. To buttress his argument, Learned Senior Advocate on behalf of the Respondent No. 7 has drawn the attention of this court on Section 15 of the Bihar State University Act, 1976 and emphasised on usage of word "may" to show that the usage



of word may in the Section 15 does not cast any mandate on the Chancellor to request for any panel of names for appointment of the registrars. He relies on the judgment of Hon'ble Supreme Court in the case of ***Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. and Ors.***, reported in ***AIR 1987 SC 1023*** in paragraph 37, it is held that,

“37. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a



whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression 'Prize Chit' in Srinivasa and we find no reason to depart from the Court's construction."

17. Learned Senior Advocate on behalf of the Respondent No. 7 has submitted that the petitioner has not been terminated, however, he has been merely transferred by virtue of Section 15(3)(c) of the Bihar State University Act, 1976 which does not have any effect of reducing his rank or termination therefore there cannot be any violation of natural justice in such transfer.
18. On query of the court that if the petitioner was transferred then why did the relieving order do not mention Section 15(3) (c) therein the order, to which the learned senior Advocate submits that the relieving order correctly mentions Section 15



as Section 15(3)(c) comes under Section 15 and even otherwise mentioning of incorrect provision of law will not be fatal to the order as long as Chancellor has the power to transfer and the procedural inaccuracies will not override the substantial justice.

19. Lastly, learned senior Advocate on behalf of the Respondent No. 7 has submitted that the writ petition is not maintainable in view of the available alternative remedy under Section 9(7)(iii) of Bihar State University Act, 1976 where the Petitioner can file a representation before the Chancellor, if he is aggrieved by the transfer order and the Learned Senior Advocate draws the attention of this court on the principles laid down by Hon'ble Supreme Court in the case of ***Radha Krishan Industries vs. State of Himachal Pradesh and Ors.***, reported in ***AIR 2021 SC 2114***, wherein Hon'ble Supreme held that:

“The principles of law which emerge are that:

- (i) The power Under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
- (ii) The High Court has the discretion not*



to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the Rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged; ...”

20. *Per contra*, learned counsel for the petitioner submits that a conjoint reading of the Memo No. BSU (Registrar)-06/2023-948/GS(I) dated 18.06.2024 and the Memo No. B/1620 dated 20.06.2024 has the effect of termination of the petitioner from the post of Registrar of B.R.A., Bihar University and mere usage of phrase of relieving will make no difference. Mr. Dhananjay Kashyap, Learned Counsel for the petitioner draws attention of this court towards the Section 15(3)(c) of the Bihar State University Act, 1976 to submit that transfer can only be made at the equivalent post



whereas it is not the case that the petitioner has been transferred to the post of Registrar of one University to another University, thus and as such the usage of phrases such as ‘relieving’, ‘transfer’ will not change the effect of the said order.

21. Learned counsel for the petitioner submits that the arguments advanced at the end of respondents suffer from inherent inconsistency as at one hand the respondents submit that the impugned order is a merely a transfer and, on the other hand, it has been submitted that the said order has been passed after due appraisal of the performance of the petitioner and the said order has been passed in academic and administrative interest of the University. Thus, if the petitioner’s performance was subjected to appraisal, then the opportunity of hearing cannot be taken away from the petitioner and such unilateral and secretive appraisal is in the teeth of principles of natural justice. Learned counsel for the petitioner bases his submission on the Paragraph No. 8 of the Counter Affidavit filed on behalf of the Respondent No. 2 and 4, which reads as follows:

“8. That it is submitted here that after performance appraisal the petitioner was ordered to be relieved forthwith vide



Notification dated 18.06.2024 of the Governor's Secretariat (Annexure P/1) within the power vested by the law to the Hon'ble Chancellor"

22. Learned counsel for the petitioner submits that the usage of phrase "may" does not mean that the appointment can be done in absolute opaque manner and the "may" in the Section 15 of the Bihar State University Act, 1976 has to be read as "shall". He further submits that the rule of interpretation allows that may can be read as shall in furtherance of the legislative intent behind a statute and he relies on the judgment of Hon'ble Supreme Court in the case of ***Mohan Singh and Ors. vs. International Airport Authority of India and Ors.*** reported in (1997) 9 SCC 132 wherein Paragraph 17, it was held that,

"17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word "shall" or "may" depends on conferment of power. In the present context, "may" does not always mean may. May is a must for enabling compliance of provision but there are cases in which, for various reasons, as



soon as a person who is within the statute is entrusted with the power, it becomes duty to exercise. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty. In "raise on Statute Law" (7th Edn.) it is stated that the Court will, as a general rule presume that the appropriate remedy by common law or mandamus for action was intended to apply. General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory. The scope and language of the statute and consideration of policy at times may, however, create exception showing that legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word "shall" is not always decisive. Regard must be had to the context, subject matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or



enactment shall be considered mandatory or directory. It is the duty of Court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under Consideration. As stated earlier, the question as to whether the statute is mandatory or directory depends upon the intent of the legislature and not always upon the language in which the intent is couched. The meaning and intention of the legislature would govern design and purpose the Act seeks to achieve. In "Sutherland Statutory Construction" (3rd Edn) Volume I at page 81 in paragraph 316, it is stated that although the problem of mandatory and directory legislation is a hazard to all governmental activity, it is peculiarly hazardous to administrative agencies because the validity of their action depends upon exercise of authority in accordance with their charter of existence the statute. If the directions of the statute are mandatory, then strict compliance with the statutory terms is essential to the validity of administrative action. But if the language of the statute is directory only, the variation from its direction does not invalidate the administrative action. Conversely, if the



statutory direction is discretionary only, it may not provide an adequate standard for legislative action and the delegation. In "Crawford on the Construction of Statutes" at page 516, it is stated that:

The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other....

23. To buttress his submission, learned counsel for the petitioner submits that it is trite principle of law that when the statute clearly mandates a process to be followed, the same is required to be done in that particular manner or not done at all. He relies on the judgment of Privy Council in the ***Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41*** wherein it was held that “*that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.*”



24. He also relies on the case of ***Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh & Ors, (2015) 13 SCC 722***, wherein Hon'ble Supreme Court held that “*Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.....*”
25. Lastly, learned counsel for the petitioner rebuts the submission advanced on behalf of the Respondent No. 7 pertaining to the maintainability of the writ petition in view of the availability of the alternative remedy by submitting that the principle enunciated in the case of ***Radha Krishan Industries vs. State of Himachal Pradesh and Ors. (Supra)*** provides that the writ is maintainable in the case of violation of principles of natural justice and it is the specific case of the petitioner that he has been terminated in violation of the principles of natural justice.
26. Having considered the submission advanced on behalf of the parties, I find force in the submission of learned counsel for the petitioner that the instant writ is maintainable as the petitioner's specific case is of violation of the principles of natural justice. It is no more *res integra* that availability of



alternative remedy is a self-imposed restriction and it is not a compulsion as held in the case of *Whirlpool Corporation vs Registrar of Trademarks, Mumbai* reported in *(1998) 8 SCC 1* as well as in the case of *Radha Krishan Industries vs. State of Himachal Pradesh and Ors. (Supra)*.

27. Now, before considering the rival submissions over the issue of termination of the petitioner, I find it apt to reproduce Section 7, Section 8, Section 15(1) and 15(3)(c) of the Bihar State University Act, 1976, which is reproduced hereunder:

7. Officers of the University- The following shall be the officers of the University-

- (1) The Chancellor
- (2) The Vice Chancellor
- (3) The Pro Vice Chancellor
- (4) The Financial Adviser
- (5) The Dean, Students' Welfare
- (6) Proctor
- (7) Registrar**
- (8) Inspector of Colleges
- (9) Finance Officer, and
- (10) Such other person or person as may be declared officers of the University by the Statutes.

8. Transfer of Officers- Officers of the University under serial nos. 4 to 9 of section 7, may be transferred by the Chancellor to **another University on the same or any other equivalent post** of within the University on any



other equivalent post.

15. The Registrar.– (1) Notwithstanding any provisions of the Act, if the Chancellor thinks fit, he may request the State Government, Central Government, University Grants Commission or any University to send names of suitable officers including the retired officers of Bihar Administrative Services for the post of Registrar, and in that case State Government, Central Government, University Grants Commission or any University may send the name of one or more officers for consideration for appointment as Registrar under such terms and conditions of service, as he may consider fit, and then the Chancellor shall appoint the Registrar from amongst them.

(2) The Registrar shall be whole time officer of the University and he shall act as Secretary to the Senate, the Syndicate and the Academic Council and shall:-

(a) be the custodian of the records, the common seal and such other properties of the



University as the Vice-Chancellor and the Syndicate shall commit to his charge.

(b) conduct the official correspondence of the University, and shall maintain the proper investment of the University;

(c) perform such other duties as may be specified in the Statutes or prescribed by the Ordinance or the Regulation or as may be required from time to time by the Vice-Chancellor, Pro-Vice-Chancellor or the Syndicate.

(d) represent the University in suits or proceedings by or against the University, sign powers of Attorney and verify pleadings or depute his representative for the purpose;

(e) render assistance to the Vice-Chancellor and Pro-Vice-Chancellor in discharge of their duties in regard to the conduct of the examination and the publication of the results;

(f) look after the proper



functioning of the institutions affiliated to the other than the Constituent Colleges and the Department of University and shall report to the Vice-Chancellor;

(g) have power to take disciplinary action against the employees belonging to the Ministerial staff and to suspend them pending inquiry to administer warning to them or to impose on them the penalty of censure or the withholding of increment:

Provided that no such penalty shall be imposed unless the person concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.

(3)(a)...

(b)...

(c) The Registrar may be **transferred by the Chancellor** from on university to another University, on the same or any **equivalent** **post.**

(Emphasis added)



28. From close examination of the scheme of the Bihar State University Act, 1976, more particularly the Section 7 and Section 15(2) of the Bihar State University Act, 1976, it would manifest that the post of Registrar has been identified as the officer of the University. The post of Registrar is not only a post of repute but it embodies the functionality of discharging important administrative function, taking important decisions as well as representative character. It is a post of high accountability and high responsibility. Similarly, if the post of Registrar is pivotal to a University, then the appointment as well as termination has to be done in a prescribed procedure and it cannot be an act of haste under the shadows of opaqueness and subjectivity.
29. I find no force in the contention of the respondents that the petitioner was transferred and, therefore, there is no requirement of observing the principles of natural justice. The obvious reason for rejection of this contention of the respondents flows from Section 8 and Section 15(3)(c) of the Bihar State University Act. From perusal of the said provisions of the Bihar State University Act, 1976, the legislative intent becomes clear that the “transfer” presupposes “equivalency of the post” and it is not the case



that the petitioner has been transferred from B.R.A. Bihar University to another University at the post of Registrar, whereas it is the case that the Respondent No. 7 has been appointed at the place of the petitioner and then the petitioner has been posted to Hajipur, thus not maintaining the equivalency of the post of Registrar shows that it is not the case of transfer simpliciter.

30. Another reason to reject the contention of the respondents flows from the submissions advanced by the Respondent Nos. 2 and 4, wherein it has been submitted on their part that the performance of the petitioner was evaluated and then it was decided to remove Petitioner from the post of Registrar in the academic and administrative interest of the University. Upon considering the submission of the respondent nos. 2 and 4, it would show that the petitioner has been terminated /removed from the post of Registrar on the basis of evaluation of his performance and such act cannot be shielded in the usage of innocuous phrases like relieving or transfer and it does not definitely become a case of transfer under Section 15(3)(c) of the Bihar State University Act, 1976.

31. It is settled law that innocuous expressions by usage of phrases like relieving does not change the nature of order and



the real test for examination of the order is to see if the person served with such order is faced with any disadvantage or stigma and if the answer is in affirmative then the such order has to be passed in strict observance of established procedures as well as principles of natural justice. The removal of the petitioner upon evaluation of performance and immediate transfer to Hajipur is bound to carry a stigma which will have definite impact on the career of the petitioner. Thus, the order of relieving of the petitioner cannot be saved by mere usage of innocuous expressions. It is admitted position that the petitioner was visited with the Memo No. B/1620 dated 20.06.24 without prior show cause or any notice in any manner, thus it is a case of clear violation of principles of natural justice where the petitioner's performance has been evaluated and he has been removed but no opportunity of hearing was afforded to him and the innocuous expression of relieving does not save the Memo No. B/1620 dated 20.06.24 from being violative of principles of natural justice.

32. Moreover, the Letter No. BSU(VC)-45/2019 dated 27.05.2020 presented by the Petitioner provides for a detailed procedure for termination of registrar by observing the



principles of natural justice. I find it apt to reproduce the contents of the letter dated 27.05.2020 hereunder:

*It has been noticed that **proposals are received in the Chancellor's Secretariat from Vice Chancellor's for termination of appointment of Officers of Universities** which has been appointed with the approval of the Hon'ble Chancellor.*

*In this regard, I am directed to inform that the Hon'ble Chancellor, after due consideration and in exercise of the powers vested in him under-section 9(7)(ii) of Bihar State University Act, 1976 and sub-section (7) of section 10 of Patna University Act, 1976 (as amended up-to-date) has been pleased to order, in the interest of natural justice, that if the Vice-Chancellor of a University in Bihar is not satisfied with the working of an Officer in his / her University who has been appointed with the approval of the Hon'ble Chancellor, for instance the Financial Adviser, **Registrar**, Finance Officer etc. and considers the termination of the appointment of such person to be in the academic or administrative interest of the University, **he / she should first seek an explanation / show-cause from the said Officer along with a statement of charges against the Officer and provide him/her a reasonable time to submit the explanation / show-cause, which should normally not be less than 7 days** (unless it is a matter of great urgency).*



Thereafter, if the Vice-Chancellor is not satisfied with the explanation / show-cause submitted by the Officer, he / she may send the proposal regarding termination of appointment of the Officer along with his / her own comments on the explanation / show-cause submitted by the Officer and clear recommendation regarding action to be taken for kind orders of the Hon'ble Chancellor

(Emphasis added)

33. From the close examination of the procedure prescribed herein above, it can be culled out that:

- I. The process is applicable to any officer, including Registrar, in the University who has been appointed with the approval of the Hon'ble Chancellor.
- II. If, the Vice Chancellor has reasons to believe that termination of such officer is in the academic or administrative interest of the University, then
- III. A show cause has to be issued with minimum 7 days time, whereas such 7 days time can be waived in matters of great urgency.
- IV. If the Vice Chancellor is not satisfied with the explanation, then recommendation can be submitted along with its own comments for orders of the Hon'ble Chancellor.

34. This court is of the opinion that if there is a prescribed



process for termination of any person from the post of Registrar, then such process cannot be simply brushed aside by saying that this procedure is not applicable on the orders made by the Chancellor as the process is applicable for recommendation made by the Vice Chancellor. If this is to be accepted then the process prescribed will be reduced to an eye wash which can be used and negated at convenience. Another reason to hold this process as mandatory is that the entire process is meant to facilitate the Chancellor to reach to a conclusion that if a person can be terminated from the post of registrar etc after considering the statement of charges and explanation along with supporting material to ensure that an informed decision is made which shall also provide an efficacious remedy to the aggrieved to approach Chancellor against such recommendation by showing faults in the material presented before him, if there is any. However, if this process is held to be not applicable on the orders made by Chancellor, then it will be open to misuse and the aggrieved person will be left remediless.

35. The contention of the respondents that the process is not applicable on the Hon'ble Chancellor is liable to be rejected for an obvious reason that if a detail procedure has been made



to facilitate the Hon'ble Chancellor in taking a decision, then in absence of such facilitation by providing materials, the decision is bound to be non-speaking and bereft of reasons which has happened in the instant case. Also, if the performance of the petitioner was evaluated, then there lies a right of the petitioner to be heard on such evaluation and non-production of any details of such evaluation during the instant proceedings by Respondent No. 2 and 4 clearly shows that purported evaluation is nothing but a feeble attempt to save a non-speaking order.

36. Another reason to reject the contention of the respondents about applicability of the procedure as contained in Letter No. BSU(VC)-45/2019 dated 27.05.2020 is that if such a proposition is accepted then it will give rise to a process absolutely opaque and subjective which cannot be the intent of any statute and such proposition cannot be said to be in academic or administrative interest of any university.

37. Now, coming to the appointment of the Respondent No. 7. From the perusal of Letter dated 31.12.2006 issued by Ministry of Human Resource Development, Department of Higher Education, Government of India and Resolution No. 15/डी 1-01/09 अंश - II उ० शि० 2693 dated 27.08.2009 issued



by the Human Resource Development Department, Government of Bihar, it can be seen that the eligibility criteria prescribed for post of Registrar is at least 5 years of experience as Assistant Professor in the AGP of Rs. 7000 and above or with 8 Years of service in the AGP of Rs. 8000 and above including as Associate Professor with experience in educational administration, however, the Respondent No. 7 has failed to show that the Respondent No. 7 is possessed with such eligibility. At this point, it is also very important to record that no appointment letter of the Respondent No. 7 has been produced which goes to the root and seriously affect the claim of the Respondent No. 7. Instead of producing appointment letter, a certificate is attempted to have been shown that the Respondent No. 7 has been working in the Patna Women's College as Assistant Professor in the Department of Physics and a the confirmation letter which in no circumstances can be said to be making the respondent no. 7 even eligible for consideration. The contention raised by the respondent no. 7 about the gross pay and excelled academic record of the respondent no. 7 is misplaced inasmuch that there is no question about the academic record of the respondent no. 7 or quantum of salary whereas the sole



eligibility is about the experience as Assistant Professor / Associate Professor and AGP of 7000 or 8000 as the case may be, therefore the contention of the Respondent No. 7 is liable to be rejected.

38. Now, insofar, the process of appointment of the respondent no.7 is concerned, the respondent nos. 2 and 4 have failed to show that any request for panel was after ever made by the Hon'ble Chancellor in consonance with the statutory provision made therein in the Section 15 of Bihar State University Act, 1976. Moreover, with regard to the contention raised by the respondent no. 7 that such request is not mandatory as the Section 15 of the Bihar State University Act, 1976 used the phrase "may" and it does not use the word "shall", is quite misplaced and appears to be based on erroneous interpretation of Section 15 of the Bihar State University Act, 1976 .

39. It is settled position of rule of interpretation that may can be used as shall and shall can be used as may depending on intent of the statute. Applying this rule of interpretation on Section 15 of the Bihar State University Act, 1976, I find the if the phrase may is merely read as directory such an interpretation shall give rise to room of subjectivity and



opaqueness. The intent of prescribing a process for demand of a panel makes the entire process of appointment transparent and it ensures that different stakeholders have suggestions to offer so that the appointment is made from a panel of eligible candidates whereas on the other hand if such process is merely reduced to directory, then such a process will always be open to abuse when any appointment can be made in an absolute opaque and subjective manner. Having considered both the propositions, I am of opinion that the intent of the statute can never be to encourage a opaque practice or process of appointment whereas the true spirit of the statute is to ensure transparency which is also ins best academic interest of the concerned university. The case of ***Mohan Singh and Ors. vs. International Airport Authority of India and Ors.*** (*Supra*) has already been discussed in preceding paragraphs.

40. If the contentions of the respondents are to be accepted that then a similar situation may arise as it has arose in the instant case where an order be passed for appointment of any person without there being any cogent reasons for the same or without even being anything to show as to why was such person considered for the post. I am of the opinion the contention of the Respondents are liable to be rejected as if



the usage of may in the Section 15 of Bihar State University Act, 1976 is read a merely directory, then such an interpretation will be contrary to the intent and spirit of the statute and therefore I hold that the may used in the Section 15 of Bihar State University Act, 1976 is mandatory in nature.

41. In view of the factual and legal aspects as enumerated in the foregoing paragraphs, I come to the conclusive finding that relieving the petitioner from the post of Registrar of B.R.A. Bihar University amounts to removal / termination in total disregard to the procedure provided therein terms of letter issued by Hon'ble Chancellor's office and as such is bad in law as well as the appointment of respondent no.7 in his place as Registrar of B.R.A. Bihar University in spite of her being ineligible in flagrant violation of the statutory mandatory requirement as contained in Section 15 of Bihar State University Act, 1976 is unsustainable in eyes of law and as such both the above orders, as contained in Memo No. BSU (Registrar)-06/2023-948/GS(I) dated 18.06.2024, Memo No. B/1612 dated 19.06.24 and Memo No. B/1620 dated 20.06.2024 are hereby quashed and set aside and the petitioner is, accordingly, reinstated to the post of Registrar, B.R.A. Bihar University with immediate effect.



42. In the result, the writ petition is allowed in aforesaid terms but there shall be no order as to costs.

(Anjani Kumar Sharan, J)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	10.01.2025
Uploading Date	14.02.2025
Transmission Date	NA

