

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1234 of 2017

IN

Civil Writ Jurisdiction Case No. 6884 of 2017

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Shashi Bhushan Kumar, aged about 50 years, son of Ram Shish Singh, resident of Village- Khamhar, P.O.- Khamhar, P.S.- Begusarai, District- Begusarai.

.... Appellant

Versus

1. The Union of India
2. The University Grant Commission, New Delhi.
3. The Principal Secretary, Ministry of Human Resources Development, Government of India, New Delhi.
4. The Vice Chancellor, Central University of South Bihar, B.I.T Campus, Patna.
5. The Registrar, Central University of South Bihar, B.I.T Campus, Patna.
6. The Finance Officer, Central University of South Bihar, B.I.T Campus, Patna.

.... Respondents

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Letters Patent Appeal—Central University of South Bihar, Cadre Recruitment (Non-Teaching Employees) Rules, 2016--- challenge to judgment passed in CWJC No. 6884 of 2017 wherein order repatriating the petitioner, who was on deputation, to his parent organization was upheld--- plea that the learned Writ Court could not take into consideration the submission that the order repatriating the petitioner casts stigma upon the petitioner and, therefore, if the petitioner was not heard, the same is liable to be set aside—*held*: in view of the issuance of the modified speaking order, the grievance of the writ petitioner-appellant has been redressed and the stigmatic part of the speaking order has been removed by the respondents--- petitioner-appellant not be entitled for salary for all these periods because he has not worked either in the Central University or in his parent organization---- however, petitioner-appellant held entitled to his continuity of service and consequential benefits thereof, if any, except salary—appeal disposed of. **(Para 12 to 15)**

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.... Respondents

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Appearance:

For the Appellant/s : Mr. Anjani Kumar, Sr. Advocate.

For the Respondent/s : Mr. S.D. Sanjayh, Addl. Solicitor General,
Mr. Alok Agrawal, Advocate.

For the Union of India: Mrs. Poonam Kumari Singh, CGC.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 04-04-2018

Challenging the judgment dated 04.08.2017 passed in CWJC No. 6884 of 2017 the original writ petitioner has moved this Letters Patent Appeal.

2. By the impugned judgment the learned Writ Court has refused to interfere with the speaking order dated 07.04.2017 passed by the Registrar, Central University of South Bihar (hereinafter referred to as ‘the Central University’). By the impugned order dated 07.04.2017 passed by the Registrar of the Central University, the



petitioner who was appointed as Internal Audit Officer on deputation to the Central University was repatriated to his parent organization, i.e., the Finance Department of the Government of Arunachal Pradesh, Itanagar with all consequential benefits.

3. The learned Writ Court considered the impugned order dated 07.04.2017, which was brought on record as Annexure-10 to the Writ Application, framed certain questions, particularly as to whether the order is *mala fide* and is an outcome of the interaction in between the petitioner and the Registrar and whether the order of repatriation is without any notice or hearing to the petitioner and thus is violation of the principles of natural justice.

4. Having heard learned counsel for the parties and taking into consideration the materials available on the record and upon discussions made thereon, the learned Writ Court rejected the contention of the learned counsel representing the petitioner that even in the case of repatriation on unsatisfactory performance ground the incumbent would be entitled to a notice as has been held by this Court in the judgment rendered in **CWJC No. 6235 of 2017 (Lallan Kumar Pandey @ Lalan Kumar Pandey Vs. The Ministry of home Affairs, Govt. of India)**. The learned Writ Court held that the appointment order of the petitioner very clearly provided that the service of the petitioner shall be governed by the Act, Statutes and



Ordinances of the University and thus it is the 'Central University of South Bihar, Cadre Recruitment (Non-Teaching Employees) Rules, 2016' (hereinafter referred to as 'the Rules, 2016'), present at Annexure-R4/A, which would apply and the same will regulate his deputation and not the Office Memorandum dated 17.06.2010 which, according to the petitioner, deals with the case of deputation of Central Government employees to ex-cadre posts under the Central Government, State Government, Public Sector Undertakings, Autonomous Body, University, Union Territory Administration, Local Bodies, etc. and *vice versa*.

5. Since the learned Writ Court refused to set aside the impugned order, the writ petitioner in appeal before us contended that the learned Writ Court could not take into consideration the submission of the learned counsel for the petitioner that the speaking order as contained in Annexure-10 to the Writ Application casts stigma upon the petitioner and, therefore, while issuing such order, as contained in Annexure-A/10, if the petitioner was not heard, the same is liable to be set aside.

6. In the preliminary hearing itself even though Mr. S.D. Sanjay, learned Senior Advocate and Additional Solicitor General representing the respondents attempted to defend the order dated 07.04.2010, as contained in Annexure-10, we had taken a prima facie



view that the impugned order does cast a stigma upon the petitioner inasmuch as not only in several paragraphs the performance of the petitioner has been declared unsatisfactory, in one of the paragraphs, it has been stated, *inter alia*, that “appointment of the petitioner as an IAO on deputation has not resulted in the development of a functional and robust Internal Audit System; rather there are enough evidences and reasons to establish that his presence and conduct has spoiled the organizational working atmosphere.”

7. Mr. Anjani Kumar, learned Senior Advocate representing the petitioner contended before us that the speaking order dated 07.04.2017, as contained in Annexure-10, is stigmatic and is liable to be set aside. It was indicated to Mr. S.D. Sanjay, learned Senior Advocate, who having noticed the difficulty in sustaining the speaking order dated 07.04.2017 (Annexure-10 to the Writ Application) had sought time to seek instruction on this point. It appears at this stage that respondent has passed a modified order during pendency of this appeal, the appellant by filing an Interlocutory Application being I.A. No. 1292 of 2018 has brought on record the modified speaking order as contained in letter no. RS/22/2018 dated 09.02.2018, issued under the signature of the respondent Registrar, Central University of South Bihar, whereby and whereunder the earlier speaking order no. CUSB/ESTT/NT/219/25/16



dated 07.04.2017 which was the impugned order contained in Annexure-10 to the Writ Application has been modified to the extent that Para 9 & 10 of the said impugned order has been redrafted even though maintaining its effectiveness w.e.f. 07.04.2017. The petitioner-appellant has brought this modified order on the record by Annexure-I/1 to the Interlocutory Application and has sought to challenge the same.

8. In view of the developments which took place during the pendency of the appeal and upon going through the modified speaking order dated 09.02.2018 we find that Para 9 & 10 of the earlier impugned order dated 07.04.2017 has been deleted to the extent indicated in Para 13 of the modified order and these two paragraphs have been redrafted as under:-

“**Pr. 9** : Whereas, the Notings and observations of the Registrar about the IAO was also considered the performance at the work of IAO was not found satisfactory.

Pr. 10 : NOW, therefore having considered the above facts, reports, notings and observations of Statutory Officers about the IAO, the Competent Authority in its considered view; is of the opinion that appointment of Sri S. B. Kumar as an IAO on deputation has not resulted in development of a functional and robust internal Audit System and therefore not desirable to continue him and thereby to repatriate him prematurely



to his original post.”

9. At this stage, learned Senior Counsel representing the appellant submits that because order has been made effective from 07.04.2017 itself he apprehends that on his joining in his parent organization, he may lose his continuity in service as also other consequential benefits. Learned Senior Counsel also submits that in the given facts and circumstances of the case where the petitioner was prosecuting his remedy before this Court against the impugned order he would be entitled for his salary and emoluments for the period he remained without work. A further apprehension has been expressed that if the modified order is made effective from 07.04.2017, the petitioner may be charged for not joining in his parent organization pursuant to his repatriation vide the impugned speaking order dated 07.04.2017 as contained in Annexure-10 to the Writ Application.

10. Mr. S.D. Sanjay, learned Senior Advocate and Additional Solicitor General of India submits that the deputation period of the petitioner-appellant is even otherwise coming to an end in April, 2018 itself and in the given facts and circumstances whereunder this Court had earlier taken a *prima facie* view against the impugned order as contained in Annexure-10 to the Writ Application, the respondents would not deprive the petitioner-appellant from continuity in service and further no disciplinary proceeding is likely to



be taken up for the only reason that he did not join his parent organization pursuant to the speaking order dated 07.04.2017.

11. Learned Additional Solicitor General further submits that the petitioner has not worked either in the present Central University or in his parent organization and, therefore, in his case the principle of 'No Work No Pay' shall apply. In order to buttress his point on this issue as to non-payability of salary for the petitioner-appellant did not work, the learned Additional Solicitor General has placed before us the office order dated 07.04.2017 as contained in Annexure-11 to the Writ Application and submits that on perusal of Annexure-11, which is an office order repatriating the petitioner to his parent organization, it could appear that in the said office order (Annexure-11) there was no stigmatic statement and the appellant should not have any difficulty in submitting his joining in his parent organization. He also submits that the office order no. 64/2017 dated 07.04.2017 nowhere refers to the speaking order as contained in Annexure-10 to the Writ Application and, therefore, Annexure-10 could have been challenged even after submitting his joining in the parent organization.

12. Having heard learned Senior Counsel representing the petitioner-appellant and learned Additional Solicitor General, we are of the considered opinion that in view of the issuance of the modified



speaking order as contained in Annexure-I/1 to the Interlocutory Application filed on behalf of the petitioner, the grievance of the writ petitioner – appellant has been redressed and the stigmatic part of the speaking order dated 07.04.2017 as contained in Annexure-10 to the Writ Application has been removed by the respondents.

13. In the peculiar facts of the case we set aside the impugned order dated 07.04.2017 (Annexure-10 to the Writ Application) as the same has already been replaced by the modified speaking order. We are in agreement with the submission of Mr. S.D. Sanjay, learned Additional Solicitor General that in the fact of the case the petitioner – appellant would not be entitled for salary for all these periods because he has not worked either in the Central University or in his parent organization. Since there was no stay of the impugned order (Annexure-10 to the Writ Application) or the office order (Annexure-11 to the Writ Application) there was no difficulty on the part of the petitioner-appellant in submitting his joining in his parent organization while contesting the stigmatic part of the order as contained in Annexure-10 to the Writ Application. In our considered opinion, the principle of ‘No Work No Pay’ shall apply in the facts of the present case.

14. We, however, record that the petitioner-appellant shall be entitled to his continuity of service and consequential benefits



thereof, if any, except salary. Further, as submitted at the Bar, no disciplinary proceeding shall be initiated against the petitioner-appellant only for the reason of not joining his parent organization pursuant to the office order as contained in Annexure-11 to the Writ Application.

15. The Letters Patent Appeal and the Interlocutory Application being I.A. No. 1292 of 2018 are allowed to the extent indicated here-in-above and the impugned judgment of the learned Writ Court is modified accordingly.

16. The Letters Patent Appeal as well as all other Interlocutory Applications which are on the records stand disposed of accordingly.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	AFR
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