IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11716 of 2025

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Dr. Geeta Kumari, wife of Sri Abhay Kumar Bharti, resident of Quarter No.01, PH-03, Dr. Rajendra Prasad Central Agricultural University Campus, Pusa, P.O. and P.S. Pusa, District- Samastipur.

... ... Petitioner/s

Versus

1. Dr. Rajendra Prasad Central Agricultural University, Pusa, P.S. - Pusa, District -Samastipur through its Registrar.
2. The Registrar, Dr. Rajendra Prasad Central Agricultural University, Pusa, P.S. - Pusa, District -Samastipur, Bihar.
3. The Vice-Chancellor, Dr. Rajendra Prasad Central Agricultural University, Pusa, P.S.- Pusa, District- Samastipur, Bihar.
4. Dr. Punyavrat Suvimalendu Pandey, name of father not known to the petitioner, presently functioning as Vice Chancellor, Dr. Rajendra Prasad Central Agricultural University, Pusa, P.S. - Pusa, District -Samastipur, Bihar.
5. The Deputy Registrar (Estt.), Dr. Rajendra Prasad Central Agricultural University, Pusa, P.S.- Pusa, District Samastipur, Bihar.
6. The Dean, College of Basic Science and Humanities, Dr. Rajendra Prasad Central Agricultural University, Pusa, P.S. - Pusa, District -Samastipur, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Advocate Mr. Saroj Kumar, Advocate
For the Respondent/s	:	Mr. P. K. Shahi, Sr. Advocate Mr. Vijay Shankar Upadhyay, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 11-09-2025

This Court has heard Mr. Shivendra Kishore, learned Senior Advocate duly assisted by Mr. Saroj Kumar, learned Advocate for the petitioner and Mr. P. K. Shahi, learned Senior Advocate along with Mr. Vijay Shankar Upadhyay, learned Advocate for the Dr. Rajendra Prasad Central

Agricultural University.

2. The brief facts, leading to the present writ petition are summarized; that while the petitioner was discharging her duties on the post of Assistant Professor in the Department of Microbiology, faculty of Basic Science & Humanities, Dr. Rajendra Prasad Central Agricultural University, Pusa (hereinafter referred to as 'the University'), the Deputy Registrar (Estt.) of the University issued Office Order No. 76 dated 18.05.2025 with the approval of the competent authority, whereby the petitioner was transferred to Banana Research Centre, Goroul, Vaishali. In subsequent to the aforenoted order of transfer, the Dean, College of Basic Science & Humanities of the University issued Officer Order No. 20 dated 28.05.2025 relieved the petitioner w.e.f. 28.05.2025 to submit her joining in Banana Research Centre, Goroul, Vaishali.

3. The aforementioned order of transfer and the consequential relieving order are put to challenge by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India on various grounds, noted hereinbelow.

4. Mr. Shivendra Kishore, learned Senior Advocate for the petitioner while assailing the impugned orders submitted that the order of transfer, in fact, amounting to reduction of the

status of the petitioner and thereby punitive in nature. At Banana Research Centre, Goroul, Vaishali (hereinafter referred to as 'the BRC, Goroul') the post of Assistant Professor, Department of Microbiology is not available. The impugned order of transfer also does not suggest as to on what post the petitioner has to discharge her responsibility at BRC, Goroul. There would be no utility of the services of the petitioner in absence of teaching facility at Goroul. On the contrary, the role of the petitioner serving as Principal Investigator of University funded project for a period of three years vide Office Order Dated 21.09.2024 shall be adversely affected due to transfer of the petitioner mid way within the period of three years. The Academic supervision of 11 M.Sc. (Agriculture) students and 3 Ph.D. scholars will also be adversely affected due to impugned order of transfer and relieving.

5. Dr. Rajendra Prasad Central Agricultural University Act, 2016 (hereinafter referred to as 'the Act, 2016') is duly enacted by the Parliament and published in the Gazette of India on 28.05.2016 by repealing the Bihar Agricultural University Act, 1987. Section 12 (1) of the Act, 2016 provides that the Vice-Chancellor shall be appointed by the Visitor in such manner as may be prescribed by the Statutes. It is further

contended that Section 12 (2) provided that Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.

6. The Statutes describe the powers and duties of the Vice-Chancellor; Under Statute 3(4), the Vice-Chancellor is empowered to exercise control over the affairs of the University and shall give effect to the decisions of all the authorities of the University. Besides all the powers necessary for the discipline in the University, the Vice-Chancellor shall have the power to convene or cause to be convened the meetings of the Board, the Academic Council etc. with other ancillary power.

7. In the entire Statute and the Act, it is nowhere provided with regard to the power of transfer vested in the Vice-Chancellor. He thus contended that in absence of an express provision vesting with the Vice-Chancellor to take such action, the order of transfer, impugned herein, is wholly without jurisdiction.

8. Learned Senior Advocate further persuaded this Court that it is only the Board of Management being the appointing authority of the Teachers as per the provisions of

Service and Recruitment Rule (Teaching Employees), 2017 notified as Ordinance, as also being the disciplinary authority for the teachers, besides other power to appoint the head of the institutions or to confirm the services of the teachers, is the only competent authority to exercise the power for transfer of a teacher. The aforenoted power has been explicitly mentioned in Section 12(4) of the Statute of the University.

9. Taking this Court through the relevant provisions of the Act and the Statute, learned Senior Advocate thus contended that under the Repealed Act i.e. Bihar Agricultural University Act, 1987 and Statute, the power of transfer was duly vested in the Vice-Chancellor under Section 11.1(iii) of the Act. However, unlike the old Act, Dr. Rajendra Prasad Central Agricultural University Act, 2016 does not contain such provision and in absence thereof the Vice-Chancellor has got no power to transfer employees from one place to other. It is only for this reason the respondent University in its counter affidavit has averred that there is long standing precedents and established practice that the Vice-chancellor has been transferring the employees to different location without referring to any specific provisions.

10. Mr. Shivendra Kishore, learned Senior

Advocate further argued that in absence of any specific provision providing express power with the Vice-chancellor or the Board of Management, it is only the appointing authority, who would be competent to pass transfer order and in the case in hand, it is the Board of Management, who is the appointing authority. Hence, in the instant case, the order of transfer is illegal, unauthorized in absence of the powers of transfer vested with the Vice-chancellor. Submissions have also been made with regard to lack of infrastructure at BRC Goroul and the non-utility of the services of the petitioner at that place, whereas prior to transfer, the petitioner has served for over 11 years in the Department of Microbiology and during the aforesaid period the petitioner has guided 18 Under Graduate Students as project adviser in various microbiological themes published 8 research papers and has further guided 6 M.Sc. Microbiology students and handled 3 funded projects related to microbiology.

11. Besides the aforesaid submission, he further contended that the impugned order is mala fide in nature and it is the Vice-chancellor of the University, who harbors personal bias and prejudice to the petitioner because of petitioner’s recognized and reputed contribution in the field of Microbiology as Scientist, which has earned her professional credibility and

distinction within the University. The petitioner also raised her grievance through representation submitted before the Vice-Chancellor for reconsideration of order of transfer on account of personal difficulty showing, two minor children currently studying in senior classes along with her mother-in-law, aged about 75 years and the posting of her husband as Deputy General Manager, Canara Bank at Murabad, U.P. On all these above, referred grounds, the challenge has been made to the impugned orders.

12. Reliance has been placed on a decision rendered by the Hon'ble Supreme Court in the case of ***Ramadhar Pandey Vs. State of U.P. & Ors***., reported in ***1993 Supp (3) SCC 35,*** to support the contention that the competent authority is obligated to see the public interest involved in the transfer of an incumbent.

13. Placing further reliance on the decision of ***Dr. Ramesh Chandra Tyagi Vs. Union of India***, reported in ***(1994) 2 SCC 416,*** it is submitted that the Court unequivocally held that in case the transfer order is passed by an authority having no competence or power delegated by the competent authority, the same is non-est in the eye of law. He lastly contended that the *bona fide* has been shown by the petitioner, as on being

relieved, she submitted her joining on 29.05.2025 in the office of Incharge BRC Goroul, which was duly accepted.

14. Mr. P. K Shahi, learned Senior Advocate representing the University while dispelling the contention of the learned Senior Advocate for the petitioner has submitted that the power of transfer is vested in the Vice-chancellor, being the Principal Executive as per Section 12(2) of the Act, 2016. Referring to the appointment letter of the petitioner, the copy of which has been brought on record through the counter affidavit as Annexure-R/1, he contended that there is an express provision of transfer under Clause 13, which explicitly says that "the posts are transferable, in the interest of work, the appointed candidates are liable to transfer at any place at the territorial jurisdiction at Rajendra Agricultural University". The offer of appointment clearly suggests that it is the Vice-Chancellor, who has been pleased to offer the appointment on the post of Assistant Professor-cum-Junior Scientist in the faculty of Agriculture. The order of transfer in no way penal in nature, rather there was a requirement for a Soil Scientist at BRC Goroul and the petitioner being a Soil Scientist promoted from Level-11 to Level-12, she has been transferred to BRC Goroul to deliver better in her core area of expertise. Since the

petitioner had already submitted her joining, which was duly accepted by the competent authority, now it cannot be challenged after her joining was accepted on the ground of estoppel, waiver and acquiescence.

15. Learned Senior Advocate Mr. P. K. Shahi further urged that the Hon'ble Supreme Court in a series of decisions held that in a transferable post an order of transfer is a normal consequence and personal difficulty are matters for department. Referring to the decision rendered in the case of ***B. Varadha Rao Vs. State of Karnataka & Ors***., reported in, ***(1986) 4 SCC 131***, it is contended that the Hon'ble Supreme Court underscored that it is an accepted principle that in public service transfer is an incident or implied condition of service and appointing authority has a wide discretion in the matter. The transfer of a government servant, who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage.

16. Referring to a further decision in the case of ***Shilpi Bose (Mrs) & Ors. Vs. State of Bihar & Ors.***, reported in, ***1991 Supp (2) SCC 659***, he emphasized his submission by

contending that the Court cautioned that normally transfer order should not interfere with, which is made in public interest and for administrative reasons, unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of *mala fide*.

17. Learned Senior Advocate for the University further argued that BRC Goroul is a pioneer institution and it was sanctioned with 6 posts of Assistant Professor, 1 post of Associate Professor and 1 post of Professor encompassing various disciplines and areas of expertise within agriculture science. Since the petitioner possesses approximately two decades of experience in both soil science and soil microbiology, she was deemed to be the most suitable candidate to strengthen the BRC, Goroul, therefore, the transfer order is in no manner unjustified.

18. The Vice-Chancellor of the University is solely responsible for judging the suitability of specialist personal for any work. The transfer order was issued by the competent authority and it is only the Vice-chancellor, who is the competent authority in this behalf. In the light of the powers conferred upon him under Section 12.2 of the Act, 2016. Moreover, nowhere in either the Act or the Statue it is

specifically mentioned that power of transfer of a teacher is vested with the Board of Management, hence Mr. Shahi, learned Senior Advocate contended that the submission of the learned Senior Advocate for the petitioner is wholly misconceived regarding power of transfer vested in the Board of Management.

19. He lastly submits that if the petitioner has still any grievance and feeling aggrieved, she has remedy under Proviso to Section 12 of the Act, 2016, which clearly provides that any person in the service of the University, who is aggrieved by the action taken by the Vice-Chancellor under this Sub-Section shall have the right to appeal against such action to the Board within three months from the date on which decision on such action is communicated to him. The Board thereupon may confirm, modify and reverse the action taken by the Vice-chancellor.

20. This Court has bestowed anxious consideration to the submissions advanced by the learned Senior Advocate for the respective parties and also perused the materials available on record, as also the relevant Act and the Statutes for proper appreciation of the issues.

21. The seminal issues for consideration before this Court are, in substance, (i) as to whether the Vice-chancellor of

the University is competent authority having jurisdiction to transfer the petitioner, who was holding the post of Assistant Professor; (ii) further as to whether the impugned transfer order is penal in nature and against the public interest warranting interference by this Court.

22. Before responding to the issues framed hereinabove, it would be worth benefiting to refer some of the decisions of the Hon'ble Supreme Court, which precisely provides a guideline in the matter for considering the legality of the transfer order.

23. It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The employee does not have any vested right to be posted at a particular place. The aforesaid legal position has been settled by catena of decisions (Vide **B. Varadha Rao and Shilpi Bose (supra),** ***S.C. Saxena Vs. Union of India & Ors.*****, (2006) 9 SCC 583,** ***Mohd. Masood Ahmad Vs. State of U.P. & Ors.*****, (2007) 8 SCC 150,** ***Somesh Tiwari v. Union of India & Ors.*****, (2009) 2 SCC 592**.)

24. An employee holding a transferable post cannot

claim any vested right to work at a particular place, as the transfer order does not affect any of his legal rights and the Court cannot interfere with a transfer/posting, which is made in public interest or on administrative exigencies.

25. In ***Union of India & Ors.*** **Vs.** ***H.N. Kirtania*****,** reported in, ***(1989) 3 SCC 447***, the Apex Court observed that transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of *mala fide*.

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

27. In **Shilpi Bose** (supra), the Apex Court while re-enforcing the settled legal position has also observed that transfer orders issued by the competent authority do not violate

any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest.

28. The Hon'ble Supreme Court while deprecating the view taken by the High Court interfering in transfer merely on the basis of some extraordinary achievements highlighted by the employee, in the case of ***Govt. of A.P. Vs. G. Venkata Ratnam***, reported in, ***(2008) 9 SCC 345*** has unequivocally held that it is not for the Court to consider where respondent would be more suited. Such an approach is rather unusual and strange as no employee can be permitted to choose his own place of posting. Thus, the Hon'ble Supreme Court found the judgment of the High Court is wholly untenable in law and observed that the High Court has not only lost the judicial poise and restraint but also arrived at completely unfounded conclusions. The transfer order could not be found as lacking in bona fides on such fanciful pleas.

29. It would also be relevant to refer a decision rendered by the Hon'ble Supreme Court in the case of ***Kavi Raj & Ors. Vs. State of J & K & Ors.***, reported in, ***(2013) 3 SCC 526*** where the Court held that an employee can only be posted (or transferred) to a post against which he is selected. He would ensure his stationing, within the cadre of posts, under his principal employer. His posting may, however, be regulated differently, by statutory rules, governing his conditions of service. In the absence of any such rules, an employee cannot be posted (or transferred) beyond the cadre to which he is selected, without his willingness/readiness.

30. The transfer order may cause great hardship as an employee would be forced to have a second establishment at a far distant place, education of his children may be adversely affected, may not be able to manage his affairs and to look after his family. The aforesaid aspect was also considered in the case of ***State of Madya Pradesh & Ors Vs. Sri S.S. Kourav & Ors.***, reported in, ***AIR 1995 SC 1056*** wherein the Hon'ble Supreme Court cautioned that it is not permissible for the court to go into the relative hardship of the employees. It is for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient

administration.

31. The issue of mala fide raised by an employee aggrieved with the transfer order was considered in T***ara Chand Khatri Vs. Municipal Corporation of Delhi and Ors***., reported in ***AIR 1977 SC 567*** wherein the Hon'ble Supreme Court held that the High Court would be justified in refusing to carry on investigation into the allegations of *mala fides* if necessary particulars of the charge making out a *prima facie* case are not given in the writ petition and the burden of establishing *mala fides* lies very heavily on a person who alleges it and there must be sufficient materials to establish malus animus.

32. This Court being mindful of the line of the decision on the issue of transfer is cautious of the position that the scope of judicial review against the transfer order is very limited and restricted if the transfer order is found to be in contravention of the statutory rules or issued by an incompetent authority or malafide is established, and/or if it is completely against the public interest and penal in nature.

33. It is trite that transfer is a condition of service within the exclusive domain of the employer to determine as to at what place and for how long the service of a particular employee is required.

34. Now coming to the case in hand after enactment of Dr. Rajendra Prasad Central Agricultural University Act, 2016 by the Parliament, which received the assent of the President on 28.05.2016 published in the Official Gazette of India on the same day after repealing the Rajendra Agricultural Universities Act, 1987, exclusively the prescription of the Act, 2016 Statutes and the Ordinance made therein, which regulate the service conditions of the teaching and non-teaching employees of the University.

35. On careful perusal of the Act and the Statute, there is no confrontation that the Vice-chancellor is the Principal Executive and Academic Officer of the University and is empowered to exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University, whereas the Board of Management shall have the power of management and administration of the Revenue and Board of the University and the conduct of all administrative affairs of the University not otherwise provided for under the Statute of the University, which has been framed under Section 27 of the Act. It is only the Board, who has been vested with the power to create teaching and academic posts and define the duties and

conditions of service of staff subject to approval of Indian Council of Agriculture Research. Statute 12(4)(ii) empowers the Board to appoint such teachers and other academic staff, as may be necessary and Deans of Colleges, Director and Heads of others institutions maintained by the University on the recommendation of the selection committee constituted for the purpose and to fill up the temporary vacancies therein. It is the Board, who is vested with the power to regulate and enforce the discipline among the employee in accordance with the Statute and Ordinances. Further under Statute12(4)(xv), the Board is empowered to delegate any of its power to the Vice-Chancellor, Deans, Director, Registrar or Controller or such other employees or authorities of the University or to a committee appointed by it, as it may deem fit.

36. No provision or any prescription or any material has been brought on record that the power of transfer is either delegated or duly vested with the Vice-chancellor of the University unlike the earlier repealed Act, 1987 where there was a specific prescription under Section 11.1(iii), which vested the power to transfer with the Vice-Chancellor.

37. The dictum referred hereinabove make it abundantly clear that the transfer is in within the exclusive

domain of the employer. An employer is in general is the entity that hires individuals and pay them for their duties, whereas an appointing authority is a specific entity with the legal power to hire an employee and exercise disciplinary control and impose actions. Under the Act, 2016, it is the Board of Management, who is acting akin to the employer being an appointing authority having disciplinary control over the teaching employees; unless such power is delegated to the Vice-Chancellor through specific Ordinance or instrument, no such power can be exercised by the Vice-Chancellor, which has not specifically been prescribed under the Act.

38. It is trite that the language of provision is the determinative factor of legislative intent and the first and primary rule of construction as has been observed in the case of ***Kanai Lal Sur Vs. Paramnidhi Sadhukhan***, reported in, ***AIR 1957 SC 907***. Intention of legislature must be found in the words used by the legislator itself. The question is not what may be supposed to have been intended but to what has been said. It is contrary to all the Rules and construction to read words into Act unless it is absolutely necessary to do so. It is an application for the same principle that the matter which should have been, but has not been provided for in a statute cannot be supplied by

courts, as to do so will be legislation and not construction [vide ***Union of India v. Deoki Nandan Aggarwal: AIR 1992 SC 96***].

39. Since under the Act, 2016 and the Statute made therein does not explicitly empowers the Vice-Chancellor to exercise the power of transfer on account of administrative exigencies, it cannot construed that he being the Principal Executive and Academic Officer of the University exercises general supervision and control over the affairs of the University, and thus it includes the power of transfer. Mere submission to the effect that it was an established practice that the power of transfer is vested with the Vice-chancellor would not be suffice in absence of specific provision under the newly enacted Act, 2016 and the Statutes made therein; unlike under the repealed Act, 1987. In absence of any provision of transfer vested, either in the Vice-Chancellor or Board of Management, unless there is any contrary provisions and or delegated power, it is only the appointing authority, who would be competent to take a decision for transfer of the employees, on administrative exigencies, in public interest and/or circumstances warrants or may be as a penal measure.

40. From the discussions made hereinabove, once the Court finds that the Vice-Chancellor is not the competent

authority under the Act, 2016 and the Statute made therein, it would be an inconsequential exercise to answer the second issue, which would only be academic in nature, hence in view of the discussions made hereinabove, the impugned order of transfer, as contained in Office Order No. 76 dated 18.05.2025 and the consequent relieving order dated 28.05.2025 are hereby set aside. The respondent authorities are directed to restore and accept the joining of the petitioner on the earlier post of Assistant Professor, Department of Microbiology, Dr. Rajendra Prasad Central Agricultural University, Pusa forthwith.

41. Before concluding this matter, it would be imperative upon this Court to deal with the contention of the respondent University that the petitioner has already submitted her joining on the transferred post and, as such, she cannot be allowed to challenge the order of transfer on the ground of estoppel, waiver and acquiescence; this also does not find merit in view of the facts that the impugned order is challenged on the ground of being wholly without jurisdiction, contrary to prescription of the Act and the Statute, as also the settled proposition of law, as referred in the case of ***S.C. Saxena*** *(supra)* where the Hon'ble Supreme Court underscored the importance of discipline amongst the employee by observing

that a government servant cannot disobey a transfer order by not reporting for duty at the place of posting and then going to court; It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. Such *t*endency of not reporting at the place of posting and indulging in litigation needs to be curbed.

42. Thus, in the opinion of this Court, the plea of the learned Senior Advocate representing the University that the petitioner cannot be allowed to challenge the order does not stand substantiated.

43. The writ petition stands allowed. There shall be no order as to costs.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.09.2025
Transmission Date	NA