

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15008 of 2021

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Dr. Meena Prasad, Wife of Dr. Arvind Kumar, Resident of Meena Complex,
Bangali Tola, Ward No.25, Bahadurpur, P.S. Town Samastipur, District-
Samastipur.

... .. Petitioner

Versus

1. The Lalit Narayan Mithla University, Darbhanga, Bihar through the Vice Chancellor.
2. The Vice Chancellor, Lalit Narayan Mithla University, Darbhanga, Bihar.
3. The Registrar, Lalit Narayan Mithla University, Darbhanga, Bihar.
4. Dr. Md. Alamgeer, Son of unknown, Resident of Mohalla- Dharampur, P.S.- Town Samastipur, Dist- Samastipur, Presently, Professor In-charge, Samastipur College, Samastipur.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Adv. Mr. Sumit Kumar Jha, Adv.
For the Respondent/s	:	Mr. Md. Nadim Seraj, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
ORAL JUDGMENT

Date : 17-05-2022

The petitioner by way of this writ petition has
prayed as under:-

(I) To issue a writ/order/direction in the nature of certiorari for setting aside the notification bearing memo no. SC/210/21 dated 30.07.2021 issued by the Vice Chancellor, Lalit Narayan Mithila University, Darbhanga by which the petitioner has been suspended from her service with immediate effect from the post of Principal, Woman's College, Samastipur and further during the period of suspension, Head quarter has been fixed at J.M.D.P.L. Mahila College, Madhubani and further one Dr. Sunita Sinha, Professor, English,



Woman's College, Samastipur has been pleased to authorized to work as Prof-in-charge, Woman's College, Samastipur (Annexure-6)

(ii) To issue a writ/order/direction in the nature of mandamus directing the respondent to immediately resume the service of the petitioner after removing suspension along with all the consequential benefits.

2. Learned Senior counsel for the petitioner submits that firstly that the order dated 30.07.2021 has been passed contrary to the statutes of the university, which lay down the method and manner in which suspension order has been passed. Learned senior counsel has taken this court to the Article 10 and 15 of the Statute, wherein it is provided the manner and procedure of suspension in two different circumstances. It is submitted that while a university servant can be placed under suspension certain principles are required to be observed, which were not followed as required under Article 10 of the Statute. Learned counsel submits that the suspension as envisaged under Article 15 of the Statute is a penalty which can be imposed only after holding a regular departmental inquiry. It is submitted that in spite of the order having been passed on 31.07.2021, the petitioner has neither been paid subsistence allowance nor departmental inquiry has been initiated. It is stated that charge sheet has not been served on the petitioner. In



this circumstances, learned senior counsel submits that the suspension order dated 31.07.2021 deserves to be quashed.

3. Per contra, learned counsel appearing for the university submits that the suspension order was issued after giving an opportunity to the petitioner to reply to the show cause notice issued by the respondent university and after inquiry made by the university through a committee and after receiving a reply the suspension order was passed and therefore this suspension is to be treated as penalty as envisaged under Article 15(4) of the Statute and therefore an appeal would lie against the said order.

4. I have considered the submissions.

5. The petitioner was holding the post of Principal of Woman's college, Samastipur. She had written a letter to the Vice Chancellor with regard to certain over writings made above her signatures in the register at Samastipur college, where she was lastly posted vide order dated 31.07.2021. It appears that she also went to the concerned college on 13.07.2021 where some altercation had taken place and show cause notice was issued to her on 27.07.2021 as to why necessary disciplinary action be not initiated against her on the allegation that she has shown indecent behaviour with the officer-in-charge and other



staff of Samastipur college. Reply was submitted by the petitioner to the show cause notice. Where after on 31.07.2021 the Vice chancellor exercising powers mentioned under Section 10(18) of the Act of 1976, ordered to suspend the petitioner on basis of prima facie evidence available against her for alleged embezzlement of fund, gross misconduct, dereliction of duty and tampering with records. After the passing of the order dated 31.07.2021, admittedly the petitioner has not been paid any subsistence allowance. A regular departmental inquiry has also not been initiated and the charge sheet has not been served. In reply, while it is stated that an inquiry was conducted through a committee, no document showing any inquiry proceedings have been placed on record.

6. It would be appropriate to quote the relevant statutes:-

10(1) A university servant should be placed under suspension for reasons to be recorded in writing and while doing so the following principles may be observed:-

- (i) If a University servant is being prosecuted on a criminal charge, he should be placed under suspension if he has been refused bail by the court and has been committed to prison.
- (ii) In cases of criminal prosecution, a University servant should be suspended if the charge against him



is such that on being found guilty of it, he is likely to be sentenced to a term of imprisonment, or on which he would be dismissed or removed from service, in a departmental enquiry. In such cases however the order of suspension need not be passed in every case immediately after cognizance has been taken. In suitable cases, it may be passed after charges have been framed.

(2) Where a University servant is being proceeded against departmentally on charges of gross misconduct, bribery, corruption or dereliction of duty, the question of suspension should be considered with reference to the prima facie evidence available against him. If there are good reasons to believe, on the basis of the material available at the time of the initiation of the proceedings, that the University servant has been guilty of gross misconduct or dereliction of duty or bribery or corruption which, if proved, would lead to his dismissal or removal, he should be placed under suspension. In cases in which such prima facie evidence is lacking at the start, the question of suspension of the University servant may be kept pending till the findings of the enquiring officer are available. In such cases he should be required to proceed on such leave as may be due to him, and, if there is leave to his credit, on extra ordinary leave. On



the conclusion of the enquiry, if it is found that the University servant is guilty of gross misconduct or dereliction of duty or of bribery or corruption which would entail his dismissal or removal from service, he should be placed under suspension.

(3) In all cases where there are reasons to believe that the University servant, if allowed to continue in active service, might attempt to tamper with the evidence, he should be required to proceed on such leave as may be due to him, or, if there is no leave to his credit, on extra ordinary leave, if he refuses to proceed on leave, he may be suspended.

Provided that the period of suspension of such University servant shall not exceed one year from the date of suspension except in circumstances beyond the control of the University.

15. The following penalties may, for good and sufficient reason and as provided in these statutes, be imposed by the appointing authority upon members of the University service namely:-

- (I) Censure;
- (ii) Withholding of increments or promotion.

The order withholding increment or promotion shall specify the period for which increment or promotion is withheld and whether withholding increment shall have cumulative effect;

- (iii) recovery from pay of the whole or part of any pecuniary loss caused to the University by negligence



or breach of orders;

(iv) Suspension;

(v) reduction to a lower post or to a lower stage in a time-scale;

(vi) removal from the University service which does not disqualify from future employment;

(vii) dismissal from the University service which will ordinarily disqualify from future employment.

Explanation I.-The discharge:

(a) of person appointed on probation, during or at the end of the period of probation on any ground arising out of the specific conditions laid down by the appointing authority, e.g., want of a vacancy, failure to acquire any prescribed special qualifications, or to pass any prescribed test;

(b) of a person appointed otherwise than under contract to hold a temporary appointment, on the expiry of the period of the appointment and

(c) of a person engaged under contract, in accordance with the terms of his contract;

does not amount to removal or dismissal within the meaning of this article.

Explanation II.- The discharge of a probationer, whether during or at the end of the period of probation, for some specific fault or on account of his unsuit-ability for the service, amounts to removal or dismissal within the meaning of this article.

18. The following procedure shall be followed in discharging a temporary University servant;

(a) When the term of appointment of a temporary



University servant provides for the termination of service, by either party giving notice of a specified period, either party can serve such notice at any time, and the service should be considered to have been terminated on expiry of the specified period of notice.

The termination of service in such circumstances does not amount to removal and dismissal from service under the relevant Article of the Indian Constitution;

(b) When a temporary appointment expressly stated to be on temporary basis is sanctioned to continue until further order and is subject to the condition that the service may be terminated at any time without notice, the termination of service does not amount to removal and dismissal from service and the service can be terminated at any time without notice;

(c) In case of a person who is appointed for particular period and it is necessary to terminate his services before the expiry of that period, full departmental proceedings will not be necessary and it will be sufficient if an explanation is called for from the person concerned asking him to show cause why his services should not be terminated, and the explanation if any so submitted, is considered before any order is passed;

(d) In cases of persons not covered under clauses (a), (b) and (c) above full departmental proceedings will be necessary before the temporary service can be terminated;

(e) In all other cases which are not covered by the foregoing provisions full departmental proceedings are necessary before temporary services can be terminated.



7. A look at the provision of the Statute above shows Article 10 speaks of two stages, where suspension orders can be passed. One is in cases, where there are criminal case registered against a person. In terms of Article 10(1) and secondly, in terms of Article 10(2), where the a university servant is proceeded against departmentally. There are two circumstances mentioned in Article 10(2). Firstly, where there are charges of gross misconduct, primary corruption and dereliction of duty, suspension order can be issued with reference to prima facie evidence. Secondly, after the departmental inquiry has been concluded, if the university servant is found to be guilty of gross misconduct, he may be placed under suspension. There is one other circumstance, where the university servant may be placed under suspension, where there are reasons to believe that he might attempt to tamper with the evidence and he is asked to proceed on leave and refuses to produce on leave. Under Article 15 suspension has been made as one of the penalties under Sub-clause (iv). Article (18) is a procedure to be followed for discharging a temporary university servant.

8. Keeping in view aforesaid, this court finds that the suspension order in the present case is essentially an



order passed under Article 10(2) at the initial stage, where prima facie evidence was found to be available against her. However, thereafter the inquiry was required to be initiated and concluded. The period of suspension can be only for the period of one year. This court finds that almost 11 months have passed but the departmental proceedings has not been initiated as no charge sheet has been issued. It goes without saying that the initiation of departmental proceeding can only be from the date charge sheet is issued. No subsistence allowance has been paid to the petitioner.

9. This court also finds that in **Jagdamba Prasad Shukla Vrs. State of U.P. & Others reported in 2000(7) SCC 90**, it was held that omission to payment of subsistence allowance was held to amounts to denial of reasonable opportunity which initiated the departmental enquiry.

10. In **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr. Reported in (1999) 3 SCC 679**, it was held as under:-

29. Exercise of right to suspend an employee may be justified on facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is



their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of Subsistence Allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nick name of 'Subsistence Allowance', so that the employee may sustain himself. This Court, in O.P. Gupta vs. Union of India & Ors. (1987) 4 SCC 328 made the following observations with regard to Subsistence Allowance : "An order of suspension of a government servant does not put an end to his service under the government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in Khem Chand v. Union of India is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance -- generally called subsistence allowance -- which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance' has an undeniable



penal significance. The dictionary meaning of the word 'Subsist' as given in Shorter Oxford English Dictionary, Vol.II at p. 2171 is "to remain alive as on food; to continue to exist". "Subsistence" means -- means of supporting life, especially a minimum livelihood."

30. If, therefore, even that amount is not paid, then the very object of paying the reduced salary to the employee during the period of suspension would be frustrated. The act of non-payment of Subsistence Allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of non-payment of Subsistence Allowance, would gradually starve himself to death.

11. In State of Punjab & Ors Vs. K.K. Sharma reported in (2002) 9 SCC 474, it was again held that non-payment of subsistence allowance would tantamount to denial of reasonable opportunity to the delinquent to defend himself in the enquiry proceedings and as such enquiry proceedings were held to be vitiated.

12. Again in (2002) 6 SCC 703 Anwarul Nisha Khatoon Vs. State of Bihar & Ors, it was held that subsistence allowance cannot be denied for the suspension period on the ground that the suspended employee had not



marked his attendance.

13. Keeping in view the above law, this court finds that the petitioner has not been paid subsistence allowance during suspension. The petitioner has also been continued for a long period under suspension without initiating departmental enquiry and without issuing charge sheet. Thus, it is being treated as a penalty imposed under 15 without conducting enquiry.

14. In view thereof, since no subsistence allowance has been paid to the petitioner and the charge sheet has also been issued for long period of 11 months, in the opinion of this court, the petitioner cannot be allowed to continue under suspension. The order of suspension being panel in nature, is directed to be revoked, however, it shall not preclude the respondents to continue their intended departmental proceedings against the petitioner. The petitioner would be at liberty to defend herself therein.

15. The petitioner would also be free to claim the subsistence allowance and other part of the salary shall be paid to her subject to the decision of the departmental inquiry.

16. The petitioner shall be reinstated and continued on the post, she was holding.



17. The writ petition is allowed as above.

(Sanjeev Prakash Sharma, J)

amit/-

AFR/NAFR	AFR
CAV DATE	NA
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