

ch. III - 2)

Date of Order

07.02

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Office notes as to action  
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IN THE HIGH COURT OF JUDICATURE AT PATNA  
C.W.J.C. No. 1918 of 2000  
Bhagirath Kumar Singh, V. The Veer Kunwar Singh  
and others. University & ors.

For the petitioner: Mr. Rajendra Prasad Singh  
Sr. Advocate,  
Mr. Chakradhari S. Singh  
Mr. Shantanu Kumar  
For the intervener: Mr. Ganeshi Prasad Singh  
Sr. Advocate  
For the State: Mr. Azfar Hason, S.C. VII  
For the University: Mr. S. P. Singh

17  
3-4-2002  
4-4-2003

The present application has been filed for quashing the notification dated 29.1.2000 whereby the petitioners, who were working in the University Office of the Veer Kunwar Singh University, Ara (hereinafter referred to as the University) and whose services are claimed to have been absorbed by the University after being endorsed by the syndicate of the University, were sent back to the constituent colleges under the University from where they were brought to the University Office (Head Quarter).

The contention of the petitioners is that the aforesaid notification has been issued without approval of the syndicate and at the instance of the present acting Vice Chancellor (Respondent No. 2) of the University.

The present application has been <sup>presented</sup> ~~placed~~ only on behalf of petitioner nos. 2 to 12 and the name of petitioner no. 1 has been prayed for to be deleted as he has already been appointed as the Finance Officer of the University. The said prayer was allowed by order dated 7.8.2002.



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goes to show that the salaries of the petitioners and similarly situated persons were to be paid directly from the University from the month of May, 1993. The service conditions of those employees would be decided in due course. Further reliance has also been made on Annexure-3, the order of the Vice Chancellor dated 28.10.1994, which goes to show that the absorption of service of the petitioners and similarly situated persons was being considered, if their services were found to be satisfactory and the post available. Annexure-6 dated 13.10.1998 is the letter of the University by which the services of the petitioners were being absorbed subject to the sanction of the post by the State Government and approval by the syndicate. Annexure-7 is the approval of the syndicate.

On the other hand, the respondent-University by filing a counter-affidavit has controverted the claim of the petitioners stating therein that the petitioners were permanent employees of the constituent colleges under the Veer Kunwar Singh University, Ara and were posted in the University (head-quarters) solely on deputation and were being paid deputation allowance also. As the aforesaid expenditure was causing strain on the University and there had been apportionment of the cadre, as such, their services were no more being required by the University (head-quarter)

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The short facts of the present case are that the petitioners, who were working in different colleges of the erstwhile Magadh University against sanctioned posts, were temporarily transferred to the University Office (head -quarters) between 1993 to 1994, except petitioner no. 8, who was brought on deputation in 1996, as Veer Kunwar Singh University was carved out from the Magadh University and as the staff for manning the University Office was not available, class-III and IV employees had been transferred and brought to Head Quarter to serve in the University office.

The aforesaid fact was not controverted by the counsel for the petitioners. It has been submitted that subsequent development, i.e., the decision of the University in the year 1988 to absorb such employees, who were working in the University office after creation of the University and the said decision being endorsed by the syndicate of the University, now it did not ~~leave~~ <sup>lay</sup> with the Vice Chancellor to pass the impugned order, as contained in Annexure-10.

In support of the above mentioned contention, the petitioners have relied upon Annexure-1, which is the order of deputation of the petitioners on vacant posts in the office of the University. ~~Annexure-2 is an office order issued by the university dated 15.6.1993, which~~

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were getting higher salary and the persons getting less salary cannot be absorbed on a post which carries higher salary and which is not equivalent. As the deputationist does not have any right, as such, they cannot claim any relief.

However, it has been contended that if the University may like they may take work from them on the higher post but under no stretch of imagination, the State would be releasing more fund for paying a higher salary to an employee who has <sup>been appointed</sup> working on a low scale of pay. This fact has not been denied by any of the counsels either the petitioner, University or the intervenors that the cadre in the University (head-quarter) is a separate cadre carrying a higher pay scale. The cadre in the constituent colleges is a separate one in itself and unless one cadre merges with the other a person being posted can only be on deputation and not otherwise.

A similar matter came up for consideration before a Bench of this court in C.W.J.C.No.7953/93 and by its order dated 9.1.1998, this court while considering the grievance of the petitioner regarding his transfer from M.J.M.Mahila College, Katihar to the head-quarter of the University, observed that the Vice Chancellor and the University under the Bihar State Universities Act, 1976 has got no jurisdiction to transfer or depute any

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class-III employee from one college to another and /or to the University. The said order had reaffirmed the earlier order of this court in C.W.J.C.No.4486/93 disposed of on 30th September, 1994 (Ram Subhak Singh.V.B.S.B.A.Bihar university).

Similar matter came up for consideration before a Division Bench of this court in L.P.A.No.1229 of 2000 filed by B.N.Mandal University .V. Manan Singh and others. A Division Bench of this court while hearing the aforesaid appeal, they affirmed the order of the writ court that an employee of the college could not be transferred to another college in spite of the fact that both the colleges were constituent colleges of the same University carrying the same pay scale, as the cadre was different. The court held that the learned single judge has rightly observed that the Vice Chancellor has no such power to transfer the writ petitioner-respondent from one constituent college to another constituent college.

In the light of the discussions as made above and the consistent view of the learned single Judge and the Division Bench quoted above, this court has no option but to dismiss the writ application holding that the petitioners were deputationists and as the

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and have been repatriated to their parent college to the cadre to which they belonged. As a deputationist has no right to remain on the post of députation, as such, the petitioners cannot make any grievance of return of their services to the parent department. It has further been contended in the said counter-affidavit that the petitioners' services were never absorbed in the University, as no post of non-teaching staff had been sanctioned by the State Government for the University till now. Regarding the decision of the syndicate for absorption of the services of the petitioners, it is contended that the same was subject to the sanction of the posts by the State Government. As the State Government has not sanctioned any post, the question of their absorption in the University cadre did not arise.

It has further been contended that as about 88 employees of the Magadh University, the parent University before creation of the new University, have been apportioned to the newly created University vide letter No.G.I.B/5231/93 dated 24.7.99 after joining of the aforesaid apportioned employees of the Magadh University, the services of the employees on deputation from the colleges and the departments were found to be surplus and they were repatriated to the parent department. With regard to the impugned order, as contained in Annexure-10, it is contended that the Chancellor of the Veer Kunwar

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deputationists have no right, their transfer cannot be interfered with and the same has to be held as valid and legal order.

This application is, accordingly, dismissed.

Sd/- Shashank Kumar Singh

CERTIFIED TO BE TRUE PHOTO COPY

Ramesh Kumar Singh

For JATH, Registrar (J)

Patna High Court

11-6-2003

Authenticated U/B 7B Act 1950

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Singh University. Ara has duly been authorised under the University Act and as such, the aforesaid order, as contained in Annexure-10, cannot be challenged on the ground of jurisdiction. In this regard sections 9 and 10 of the Universities Act have been relied upon.

An intervention petition has also been filed by the apportioned employees from the Magadh University who had been posted in the Veer Kunwar Singh University after being apportioned from the Magadh University. The stand taken by the intervenors is more or less the same as that of the University. The only further relief, which has been claimed, is that they are the apportioned employees from the parent Magadh University to the Veer Kunwar Singh University, Ara and are working on sanctioned posts. Their salary has already been released by the State Government. As such, the University be directed to pay them their salary and not pay part therefrom to the employees on deputation.

Learned counsel for the State has fully supported the stand of the University stating therein that the deputationist does not have any right. Their cadre is in the college or department where they have been appointed on ~~vacant sanctioned posts~~ rather it has been contended that the employees of the University