IN THE HIGH COURT OF JUDICATURE AT PATNA

Dr. Naveen G H

vs.

Union Of India and Others

Civil Writ Jurisdiction Case No.102 of 2023

8 May, 2023

(Anil Kumar Sinha, J.)

Issue for Consideration

Whether Office Order issued by the Registrar, Nalanda University, regarding not extending the contract period of the petitioner, under probation, and the petitioner was given one-month notice to clear dues and submit 'No Dues Certificate' are correct or not?

Headnotes

University Laws—petitioner was appointed on the post of Senior Assistant Professor on contract basis for a period of three years—entire period of contract is on probation and is based on effectiveness of delivery, accountability, conduct and deportment, scholarship and integrity—period of probation can be further extended—there will be a review of the performance and conduct as per the decision of the University—petitioner was not given any opportunity to improve his performance and he was not told in advance that his work and performance was not up to the mark.

Held: upon review of the performance of the petitioner, an opportunity was given to the petitioner to improve his academic performance, but the petitioner failed to deliver his teaching obligations, due to lack of knowledge of the fundamentals and theoretical part of the subject—University, in terms of the Contract, decided not to extend the probation period of the petitioner—it is well-settled principle of law that if the probationer is dismissed/terminated during the period of probation, no opportunity is required to be given and, therefore, the question of violation of principle of natural justice does not arise—impugned order is not stigmatic and punitive, the principle of natural justice, stricto senso, is not applicable—from documents on record, it emerges that the petitioner was given adequate opportunity to improve his performance by the

Dean on various occasions, including the counselling by the Vice Chancellor and other authorities of the University in several meetings held between them and the petitioner—impugned order is not founded on the allegation of misconduct and is not punitive—writ petition dismissed.

(Paras 1, 2, 34, 36, 37, 38, 40 and 42)

Case Law Cited

Om Prakash Mann vs. Director of Education (Basic) and Others, **(2006) 7 SCC 558**; State Bank of India and Others vs. Palak Modi and Others, **(2013) 3 SCC 607**; Samsher Singh vs. State of Punjab and Another, **(1974) 2 SCC 83**; Purshottam Lal Dhingra vs. Union of India, **AIR 1958 SC 36: 1958 SCR 828**: **1958 SCJ 217—Relied Upon.**

Champaklal Chimanlal Shah vs. Union of India, **AIR 1964 SC 1854: (1964) 5 SCR 190: (1964) 1 LLJ 752**; Oil & Natural Gas Commission vs. Dr. M.D.S. Iskender Ali, **(1980) 3 SCC 428: 1980 SCC (L&S) 446—Referred To.**

Sumati P. Shere vs. Union of India and Others, **(1989) 3 SCC 311—Distinguished.**

List of Acts

University Laws; Nalanda University Act, 2010; Nalanda University Statutes, 2012; Nalanda (Amendment) Statutes, 2021.

List of Keywords

Extension of contract period, university laws, assistant professor, termination, principle of natural justice, stricto senso, accountability, scholarship.

Case Arising From

From Office Order, dated 06.12.2022, issued by the Registrar, Nalanda University, under memo no. NU/ACAD/2021-22, by which the petitioner has been informed that after due review of his performance, the further extension of the contract period of the petitioner, under probation, has not been considered and the petitioner was given one-month notice to clear dues and submit ‘No Dues Certificate’.

Appearances for Parties

For the Petitioner: Mr. Abhinav Srivastava, Advocate; Mr. Rudraksh Shivam Singh, Advocate; Mr. Arpit Anand, Advocate; Mr. Raushan, Advocate; Mr. Pushkar Bhardwaj, Advocate.

For the Union of India: Mr. Anshuman Singh.

For the University: Mr. Anjani Kumar, Sr. Adv.; Mr. Amit Jha.

Headnotes Prepared by Reporter: Abhas Chandra.

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.102 of 2023

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Dr. Naveen G H Son of Halappa G R, IDK 108/A, Ganesh Colony, resident of P.O.-Bhadravati, P.S.-Shimoga, State-Karnataka, Pin Code-577 301

... ... Petitioner/s

Versus

1. The Union of India through the Secreary, Ministry of External Affairs, New Delhi.
2. Nalanda University, Rajgir, District-Nalanda through its Registrar
3. Vice Chancellor, Nalanda University, Rajgir, District-Nalanda.
4. Registrar, Nalanda University, Rajgir, District-Nalanda.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhinav Srivastava Mr. Rudraksh Shivam Singh Mr. Arpit Anand Mr. Raushan Mr. Pushkar Bhardwaj
For the Union of India	:	Mr. Anshuman Singh
For Nalanda University	:	Mr. Anjani Kumar, Sr. Adv. Mr. Amit Jha

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
C.A.V.

Date : 08-05-2023

The petitioner, who was appointed on the post of Senior Assistant Professor in the School of Public Health/School of Buddhist Studies, Philosophy and Comparative Studies, at Nalanda, (herein after referred to as ‘the School’), under the Nalanda University, on contract basis for a period of three years, has approached this Court for quashing the Office Order, dated 06.12.2022, issued by the Registrar, Nalanda University, under memo no. NU/ACAD/2021-22, by which the petitioner has been informed that after due review of his performance, the further

extension of the contract period of the petitioner, under probation, has not been considered and the petitioner was given one-month notice to clear dues and submit 'No Dues Certificate'.

2. As per the terms of the contract agreement, executed on 10.08.2021, between the petitioner and the Nalanda University (herein after referred to as 'the University'), the entire period of contract is on probation and is based on effectiveness of delivery, accountability, conduct and deportment, scholarship and integrity. The period of probation can be further extended. There will be a review of the performance and conduct as per the decision of the University.

3. The factual matrix of the case is that the University has been incorporated under the Nalanda University Act, 2010 as an international institution for pursuit of intellectual, philosophical, historical and spiritual studies and the said Nalanda University Act, 2010, has been enacted to implement the decision arrived at the 2nd East Asia Summit, held on 15.01.2007, at Philippines and subsequently, the 4th East Asia Summit, held on 25.10.20098, at Thailand.

4. As per Section 28 of the Nalanda University Act, 2010, the Governing Board of the University framed the Nalanda University Statutes, 2012, which were subsequently amended by

the Nalanda (Amendment) Statutes, 2021, laying down the provisions for the manner of appointment of different officers, teachers and other employees of the University as well as their emoluments and other conditions of service.

5. Through an advertisement, dated 31.03.2020, the University published a rolling advertisement for faculty positions inviting CV/expression of interest for teaching faculty from qualified and meritorious candidates for the post of Professor/Assistant Professor in the various Schools of the University, including the School of Buddhist Studies, Philosophy and Comparative Religions.

6. The petitioner, who possess qualification of M. Sc. in Basic Sciences, Yoga Philosophy and Yoga Therapy as well as Ph.D. in Yoga Therapy and Psychiatry and also possess the qualification of NET in Yoga, submitted his CV along with the required details through e-mail, dated 26.03.2021, and accordingly, he was informed that his application had been shortlisted and he was called for the interview, scheduled to be held on 30.06.2021, at the Delhi Office of the University. The petitioner participated in the interview held by the University and by letter, dated 12.07.2021 (Annexure-3), issued by the Registrar of the University, the petitioner was informed that he has been appointed

against the post of Senior Assistant Professor in the School on a three-years tenure track in the pay-scale of US $ 15000-25000 per annum, along with other admissible allowances, subject to the terms and conditions indicated in the letter, dated 12.07.2021.

7. Clause 3 (iii) of the appointment letter, dated 12.07.2021, stipulates that the appointment of the petitioner would be on probation from the date of his joining the post in the University, which can be extended at the discretion of the Appointing Authority.

8. Pursuant to the aforesaid offer letter, the petitioner submitted his joining as Senior Assistant Professor under the University and accordingly, the employment contract, dated 10.08.2021 (Annexure-4), was executed between the petitioner and the Registrar of the University. The appointment of the petitioner was on contract basis for a period of three years and was extendable, subject to satisfactory performance.

9. Clause 1.3 of the Contract says that the entire period of contract shall be on probation and based on the review report, the tenure track could be considered for tenured position, or further extension of probation or exit.

10. Clause 4 of the Contract deals with termination of an employee and stated that the employee, under this agreement, shall

be liable to be terminated in the events of violation of the terms of this agreement or there is an allegation of misconduct or for indulging in activities that are not in the interest of the University.

11. According to the petitioner, after his joining in the capacity of Senior Assistant Professor, he started discharging his duties with utmost dedication and sincerity and the petitioner continued to discharge his duties to the best of his ability and there had been no complaint(s) against him with respect to his performance as a faculty in the services of the University.

12. The respondents-University filed a counter affidavit, stating therein that the writ petition is not maintainable as the petitioner was a faculty on probation and as per the terms of the Contract, the entire period of contract is on probation. In the first year of the contract, his performance was reviewed and his probationary contract period was not extended. The petitioner has never been terminated. The petitioner was well aware about the fact that further extension and/or continuation on probation is subject to good performance, scholarship, conduct and probity, which was not adhered to by the petitioner despite him being counselled by the Dean and the Competent Authority on several occasions by keeping the principle of natural justice in mind.

13. During the probation of the contractual term of the petitioner, he was given several opportunities to improve his conduct, bring in work ethics and improve his scholarship and performance with due respect for the international stature and image of the University. He was counselled, advised and cautioned several times not only by the Dean of the School, but by the Competent Authority as well in a couple of meetings.

14. In view of the provisions as stated in Clauses 1, 1.1 and 1.3 of the Contract, a performance report was duly sought from the respective Schools/Deans and his performance and conduct was duly reviewed before taking a decision not to further extend the contract period under probation. The petitioner was also given one month notice, in advance, to clear his dues and submit a 'No Dues Certificate. A copy of the Review Reports and certification by the Secretariat of the Vice Chancellor has been annexed as Annexures R2/2 and R2/2A to the counter affidavit.

15. Learned Counsel for the petitioner, while assailing the impugned order, submits that the impugned order does not mention about any report, finding the conduct of the petitioner unsatisfactory, on which his probation period was not extended. No communication of his performance being below the mark was ever made to the petitioner and the petitioner was not given any

opportunity to improve his performance and/or submit his explanation before the Authority. Accordingly, the impugned order is completely in violation of the principle of natural justice. The petitioner was never informed/communicated that after due enquiry, his probation period was not considered for further extension and opportunity of being heard was also not granted to the petitioner before passing the impugned order.

16. In support of his argument, learned Counsel for the petitioner placed reliance on a decision of the Supreme Court, in the case of **Sumati P. Shere v. Union of India and Others**, reported in **(1989) 3 SCC 311**.

17. On the other hand, learned Senior Counsel, appearing on behalf of the University, argued that the University is an autonomous body, under Section 9 (2) of the 2010 Act and is accountable to the Governing Board. The Union of India, through the Secretary, Ministry of External Affairs, New Delhi, who has been impleaded as respondent no. 1, does not manage/govern the University. The petitioner was on probation and in the first year of his probationary contractual term, a decision not to extend the probation period was taken based upon the review of his performance and discretion of the University, the impugned order is neither an order of termination nor dismissal; rather, it is an

advance intimation of one-month of non-extension of contractual and probationary term, where the entire period of contract, signed by the petitioner, was probationary period. He further argued that despite being counselled and advised on several occasions by the Dean and the Competent Authority to the petitioner keeping in mind the principles of natural justice, the petitioner could not improve. In support of his argument, learned Senior Counsel relies upon the review reports and dates of meetings of the petitioner for counselling (Annexures R2/2 and R2/2A to the counter affidavit).

18. Learned Senior Counsel also argued that the impugned order is not stigmatic in nature. He further argued that the petitioner is the signatory to the Contract, therefore, he cannot state his ignorance on the conduct and performance review in compliance of the provisions of the Contract. He next argued that the petitioner has himself accepted the terms of the Contract, implying his consent to the given terms and conditions.

19. In support of his argument, learned Senior Counsel relies on the decisions of the Supreme Court, in the cases of **Om Prakash Mann v. Director of Education (Basic) and Others**, reported in **(2006) 7 SCC 558**, **State Bank Of India and Others v. Palak Modi and Others**, reported in **(2013) 3 SCC 607**, and

Samsher Singh v. State of Punjab and Another, reported in **(1974) 2 SCC 831**.

20. I have heard learned Counsel for the parties concerned and have gone through the materials on record, including the case laws, cited by them.

21. In the case of **Sumati P. Shere** (supra), relied upon by learned Counsel for the petitioner, the Supreme Court has held, in paragraph 7, as follows:-

> "**7.** There cannot be any dispute about this proposition. We are not laying down the rule that there should be a regular enquiry in this case. All that we wish to state is that if she is to be discontinued it is proper and necessary that she should be told in advance that her work and performance are not up to the mark."

22. The Supreme Court, in the backdrop of the facts and decision relied upon in the cases of **(i) Champaklal Chimanlal Shah v. Union of India [AIR 1964 SC 1854 : (1964) 5 SCR 190 : (1964) 1 LLJ 752]** and **(ii) Oil & Natural Gas Commission v. Dr. M.D.S. Iskender Ali [(1980) 3 SCC 428 : 1980 SCC (L&S) 446]**, observed that there cannot be any dispute about this proposition that the termination of service, in the case of probationer, on the ground of unsuitability for the post does not attract Article 311(2) of the Constitution of India. The Supreme

Court has further held that we are not laying down the rule that there should be a regular enquiry in this case and all that we wish to state is that if she is to be discontinued, it is proper and necessary that she should be told in advance that her work and performance are not up to the mark.

23. In the case of **Palak Modi** (supra), the Supreme Court has held, in paragraph 25, as follows:-

> "**25**. The ratio of the abovenoted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice."

24. In the case of **Samsher Singh** (supra), the Supreme Court has held, in paragraph 62, as follows:-

"**62.** The position of a probationer was considered by this Court in *Purshottam Lal Dhingra* v. *Union of India* [AIR 1958 SC 36 : 1958 SCR 828 : 1958 SCJ 217]. Das, C.J. speaking for the Court said that where a person is appointed to a permanent post in Government service on probation the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment because the Government servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to do so. Such a termination does not operate as a forfeiture of any right of a servant to hold the post, for he has no such right. Obviously such a termination cannot be a dismissal, removal or reduction in rank by way of punishment. There are, however, two important observations of Das, C.J. in *Dhingra case*. One is that if a right exists under a contract or Service Rules to terminate the service the motive operating on the mind of the Government is wholly irrelevant. The other is that if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and violates Article 311 of the Constitution. The reasoning why motive is said to be irrelevant is that it inheres in the state of mind which is not discernible. On the other hand, if termination is

> founded on misconduct it is objective and is manifest."

25. On a careful scrutiny of the terms of the contract, I find that Clause 1.1 of the Contract relates to the service condition and stipulates that the services of the Employee can be ceased/discontinued without assigning any reason thereof on or before completion of the term. In the event of the employee deciding to resign from her/his engagement during the service period, she/he shall give one month notice or one month salary in lieu thereof during the period of probation. After completion of the probation period, the employee concerned will be required to serve the notice for a period of three months or three month salary in lieu thereof.

26. Clause 1.3 of the Contract deals with probation and says that the entire period of contract shall be on probation and based on effectiveness of delivery, accountability, conduct and deportment, scholarship and integrity, her/his probationary period may further be extended. There will be a review of the performance and conduct as per the decision of the University. Based on the review report, the tenure track may be considered for tenured position or further extension of probation or exit.

27. Clause 1.4 of the Contract deals with the salary, which says that the employee shall receive such salary/ emoluments as per the University Rules/Stipulations, subject to any modifications by the nodal Ministry, Government of India, provided that whenever there is any change in the nature of appointment or the emolument, the change shall be recorded.

28. Upon perusal of the terms of the Contract, it is clear that the extension of probation or exit is depended upon review of the performance of the employee and the termination of the Contract is depended upon the violation of the terms of the agreement by the employee and also when there is allegation of misconduct or in indulging in the activities that are not in the interest of the University.

29. From perusal of the impugned order, dated 06.12.2022, it is apparent that the same is not the order of termination, but the University has decided not to extend further the contract period of the petitioner under probation. Accordingly, the impugned order is not stigmatic and is an order simplicitor not to extend the period of probation after due review of the performance of the petitioner.

30. The respondents-University, in paragraph 20 and 23 of its counter affidavit, has specifically stated that keeping the

principle of natural justice in mind, the petitioner was counselled several times advising him to improve his conduct, performance and accountability, and despite several counselling sessions and after being given ample time and opportunities and after taking into consideration the review report on the performance of the petitioner in the academic programme submitted by the Dean, the petitioner did not pay heed to the counselling to improve his performance, scholarship, effectiveness of delivery, conduct and accountability.

31. In support of the submission, the University has annexed the review report submitted by the Dean of the School and the document showing several meetings, held on different dates, between the petitioner and the Authorities of the university for his counselling. The petitioner has not denied the statement made in the aforesaid paragraphs as well as the documents, annexed at Annexure R2/2.

32. Upon perusal of the review report (Annexure R2/2), it transpires that the Dean and the Chair Scholarship Committee, in the review report on the performance of the petitioner, has stated that as the Dean, I have several faculty teachings under me in two Masters programs and I frequently interact with students and when they bring up certain issues, I try and address them immediately

keeping with the vision and image of the university. The report further states that Dr. Halappa (the petitioner), who claimed to be an expert on Yoga was assigned to teach a course "Patanjali Yoga-sutras-Theory and Practice" to the students of Second semester MA Hindu studies. The students have orally complained several times that he was not able to teach the course properly and I also received complaints on his lack of scholarship on Yoga or Yoga philosophy. In short, not only Yoga- sutras, he has no expertise to teach any of the courses in the School. Despite being advised to improve his scholarship, effectiveness of delivery and accountability to teaching and deportment, he kept arguing and misleading by telling lies. The Dean further states that he was worried about assigning him any work pertaining to the school.

33. Another report of Sri Abhay Kumar Singh, Dean-in-Charge of the School, is also on record relating to the work of the petitioner based upon the feedback received from faculty members/students/employees, it has been stated that lack of knowledge of the subject matter is evident in the teaching work of Dr. Naveen G. Halappa. The teaching courses in the School was allotted to him, but he failed to deliver in his teaching obligations, solely due to his lack of knowledge of the fundamentals and theoretical part of the subject, which affected the level of studies

of international and Indian students in the School. Students often complained about this. Another course on "Wellness and Healing Traditions from India" also suffered and was not opted by students, due to his ineffectiveness. The report further states that Several meetings, where Dean was also present, in which counselling by Hon'ble Vice-Chancellor was given, and the petitioner was offered ample opportunity and guidance to improve and deliver, but he has denied any accountability for himself and also failed to improve his conduct and teaching.

34. The main plank of the argument of learned Counsel for the petitioner is that the petitioner was not given any opportunity to improve his performance and he was not told in advance that his work and performance was not up to the mark.

35. In view of the factual position discussed herein above and on the basis of unconverted facts stated by the University in the counter affidavit, the veracity of the same cannot be doubted by this Court, I come to the conclusion that the decision, relied upon by the petitioner, is not applicable in the facts and circumstances of the present case inasmuch as there is a specific statement, supported by the documents, that upon review of the performance of the petitioner, an opportunity was given to the petitioner to improve his academic performance, but the

petitioner failed to deliver his teaching obligations, due to lack of knowledge of the fundamentals and theoretical part of the subject. The University, in terms of the Contract, decided not to extend the probation period of the petitioner. I also come to the conclusion that the University had given opportunity to the petitioner at the counselling on various occasions to improve his performance and ability. Accordingly, the University, based on the review reports and in terms of Clause 1.3 of the Contract, which deals with the Probation, rightly decided not to extend the probationary period of the petitioner any further.

36. The Supreme Court, in the case of **Om Prakash Mann** (supra) has held that By now, it is well-settled principle of law that the doctrines of principle of natural justice are not embodied rules and they cannot be applied in a straitjacket formula. It is well-settled principle of law that if the probationer is dismissed/terminated during the period of probation, no opportunity is required to be given and, therefore, the question of violation of principle of natural justice does not arise.

37. In the case of **Palak Modi** (supra), the Supreme Court has held that the probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for

the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive.

38. As I have already come to the finding that the impugned order is not stigmatic and punitive, the principle of natural justice, *stricto senso*, is not applicable in the facts of the case. However, from the documents available on record, it emerges that the petitioner was given adequate opportunity to improve his performance by the Dean on various occasions, including the counselling by the Vice Chancellor and other authorities of the University in several meetings held between them and the petitioner.

39. The Supreme Court, in the case of **Samsher Singh** (supra), while discussing the decision rendered by it, in the case of ***Purshottam Lal Dhingra* v. *Union of India* [AIR 1958 SC 36: 1958 SCR 828: 1958 SCJ 217]**, has noted that there are, however, two important observations of Das, C.J. in Dhingra's case. One is that if a right exists under a contract or Service Rules to terminate the service the motive operating on the mind of the Government is wholly irrelevant. The other is that if the termination of service is

sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and violates Article 311 of the Constitution. The reasoning why motive is said to be irrelevant is that it inheres in the state of mind which is not discernible. On the other hand, if termination is founded on misconduct it is objective and is manifest.

40. In the present case, the respondent-University in exercise of its right, under the terms of the Contract, has passed an innocuous order of not extending the probation period of the petitioner, based upon the review report of his performance. The impugned order is not founded on the allegation of misconduct and is not punitive.

41. As discussed herein above, on facts as well as on law, in my considered opinion, the impugned order does not require any interference by this Court.

42. In the result, the present writ application is dismissed.

43. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	23-03-2023
Uploading Date	08-05-2023
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