

1961

December 16.

DR. RAI SHIVENDRA BAHADUR

v.

THE GOVERNING BODY OF THE
NALANDA COLLEGE(B.P. SINHA, C. J., J. L. KAPUR, M. Hidayatullah,
J. C. SHAH and J. R. MUDHOLKAR, JJ.)

Writ of Mandamus—Nalanda College affiliated to Bihar University—Appointment of Principal—Legal right, if any with regard to question of appointment—If and when writ can issue University of Bihar Act 1951 (Bihar 27 of 1951), University Statute XVI—Constitution of India, Art. 226.

The appellant was appointed as the Principal of Nalanda College affiliated to the Bihar University in 1958. As required by the University Statute XVI this fact was intimated to the University, but the appointment was not approved by the Syndicate as required by Art. 5, of the University Statute. In 1960 a new governing body resolved to appoint a new principal and decided that in the meantime the appellant was to continue to act till the new appointment was made. The governing body interviewed candidates including the appellant and by a resolution authorised its Chairman to make a final selection. The validity of the selection of the Principal was challenged by the appellant under Art. 226 of the Constitution by asking a writ of *mandamus* to issue.

Held, that in order that *mandamus* may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty and the aggrieved party had a legal right under the statute to enforce its performance.

In the instant case it has not been shown that there was any right in the appellant which can be enforced by a writ of *mandamus*.

CIVIL APPELLATE JURISDICTION : Civil Appeal
No. 403 of 1961.

Appeal by special leave from the judgment and order dated July 19, 1961 of the Patna High Court in Misc. Judicial Case No. 404 of 1961.

Basudeva Prasad and *Naunit Lal*, for the Appellant.

N. C. Chatterjee, *D. P. Singh*, *R. K. Garg*,
S. C. Agarwala and *M. K. Ramamurthy*, for the respondents.

1961. December 15. The Judgment of the Court was delivered by

KAPUR, J.—This is an appeal by special leave against the judgment and order of the High Court of Patna dismissing the appellant's petition under Art. 226 of the Constitution. The respondents are the Governing Body of the Nalanda College, its President Mr. Krishna Kant Singh, its Secretary Mr. K. B. P. N. Singh and Mr. Ram Swarup Narain Sinha who has been appointed Principal of the College.

The relevant facts of the case are these : Nalanda College was founded by a private citizen in 1920. It became a degree college in 1945 and was affiliated to the Bihar University in 1951. In March 1953, Mr. D.P. Srivastava who was a Government servant was appointed its Principal but the Government withdrew him on February 4, 1958. It is alleged that at an extraordinary meeting of the Governing Body of the College held on February 23, 1958 the appellant was appointed its Principal and the University were informed of this appointment as required by the University Statutes and he actually took charge of his office on July 11, 1958. At a meeting on July 27, 1958 the appointment made on February 23, 1958 was confirmed. On November 9, 1959, there was a change in the constitution of the Governing Body and respondent No. 2 became its Chairman. The Governing Body reconsidered the proceedings of February 23, 1958 and at a meeting on January 31, 1960, the Governing Body resolved to appoint a new Principal. In the meanwhile it decided that the appellant should continue to act till a new appointment was made. At this meeting the appellant, as an ex-officio member, was present. He alleges that he complained about this appointment to the Vice-Chancellor of the Bihar University and he was, by a letter, advised by the Vice-Chancellor to watch and see what

1961

*Dr. Rai Shivendra
Bahadur*

v.

*The Governing Body
of the Nalanda
College*

Kapur J.

1961

Dr. Rai Shivendra
Bahadurv.
The Governing Body
of the Nalanda
College

Kapur J.

happens. On May 14, 1960 the Governing Body resolved to advertise the post. At this meeting also the appellant was present and on September 26, 1960 the Governing Body resolved to readvertise the post. Some candidates including the appellant were interviewed by the Governing Body and on December 18, 1960 it passed a resolution authorising the Chairman to make a selection from amongst the candidates who had been interviewed, and who included the appellant. In accordance with this resolution the President, respondent No. 2, appointed respondent No. 4 as the Principal of the College. He was at that time a Principal of another College in Bihar. On April 18, 1961 the appellant was asked to hand over charge to the new appointee by May 6, 1961. The petitioner thereupon filed a petition under Art. 226 of the Constitution challenging the validity of the appointment of respondent No. 4 as Principal on the ground that the appellant's appointment was never terminated and if there was any resolution by which resolution of February 23, 1958 was rescinded or cancelled, it was illegal as it was not included in the agenda to be transacted and was void because of certain provisions in the University Statute framed under the University of Bihar Act, 1951 (Act 27 of 1951), which had the force of law; that the appointment of the New Principal was invalid because the appointment had to be made by the Governing Body of the College at its meeting and the power could not be delegated to the President or the Secretary; that the appointment was not approved by the University and the appellant was a better candidate than respondent No. 4 and he was entitled to promotion under Art. 4(1)(b) of Statute XVI.

These allegations were denied by the respondents. They pleaded that the resolution of February 23, 1958 was not valid because it did not consider the case of other teachers for promotion;

that the appointment of the appellant was never approved by the Syndicate as required by Art. 5 of Statute XVI; that the appellant having himself applied for the post of Principal after the resolutions were passed by the new Governing Body and having offered himself for interview before the Governing Body could not challenge the legality of the appointment as he could not approbate and reprobate.

The High Court held that the appellant's appointment was not valid as the Syndicate had not given its approval and the petitioner had been allowed to join the post of Principal without such approval; that the decision of the Governing Body to advertise for the post of Principal was neither a case of punishment nor termination of service nor was it a demotion of the appellant, therefore it did not fall under Arts. 7, 8 and 9 of the Statutes. It also held that there was no protest from the appellant against the passing of the new resolution and as he submitted himself for selection, he could not now complain if some body else was selected. It was held therefore that the appellant could not challenge the new appointment because (1) his own appointment was not valid and (2) the appointment of respondent No. 4 was valid as it was approved by the University.

A great deal of controversy was raised before us as to whether the Statutes framed by the University under s. 20 of University of Bihar Act have or have not the force of law and whether a writ under Art. 226 of the Constitution can issue against the Governing Body of the College i.e., whether the appellant has a legal right to the performance of a legal duty by the respondents. In order that *mandamus* may issue to compel the respondents to do something it must be shown that the Statutes impose a legal duty and the appellant has a legal right under the Statutes to enforce

1961

Dr. Rai Shivendra
Bahadur
v.

The Governing Body
of the Nalanda
College

Kapur J.

1961

Dr. Rai Shivendra
Bahadur

v.

The Governing Body
of the Nalanda
College

Kapur J.

its performance. It is, however, wholly unnecessary to go into or decide this question or to decide whether the Statutes impose on the Governing Body of the College a duty which can be enforced by a writ of *mandamus* because assuming that the contention of the appellant is right that the College is a public body and it has to perform a public duty in the appointment of a Principal, it has not been shown that there is any right in the appellant which can be enforced by *mandamus*. According to the Statutes all appointments of teachers and staff have to be made by the Governing Body and no person can be appointed, removed or demoted except in accordance with Rules but the appellant has not shown that he has any right entitling him to get an order for appointment or reinstatement. Our attention has not been drawn to any Article in the Statutes by which the appellant has a right to be appointed or reinstated and if he has not that right he cannot come to Court and ask for a writ to issue. It is therefore not necessary to go into any other question.

In the result the appeal fails and is dismissed, but in the circumstances the parties are left to bear their own costs.

Appeal dismissed.
