

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 1953 OF 1999@@
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U.S.P. Srivastava ... Appellant (s)

Vs.

Vinoba Bhawe University & Ors. ... Respondent (s)

Date : 15/11/2000 These petition(s)/appeal(s) was/were called
on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIK
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s) Mr. Rajnish Ranjan, Adv. for
Mr. Pavan Kumar, Adv.

For Respondent (s) Mr. Amarendra Sharan, Adv.

UPON hearing counsel, the Court made the following
O R D E R

.SP2 The appeal is dismissed in terms of the signed order.
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(J.S. Rawat)
Court Master

(Suneet Bala Sharma)
Court Master

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 1953 of 1999@@
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U.S.P. Srivastava

...Appellant (s)

Versus

Vinobba Bhawe University & Ors.

...Respondent(s)

O R D E R~@@
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This appeal is directed against the judgment of the Division Bench of the Patna High Court affirming the decision of the learned Single Judge of the said High Court. The appellant had been appointed as a Reader under a scheme called "Merit Promotion of Lecturers as Readers". Under the provision of that Scheme the appointment could be made by the syndicate in accordance with the recommendation of the Bihar State University Service Commission (for short "the Service Commission") and such appointment would continue on temporary basis until the Service Commission's final opinion is given. The appointment letter in favour of the appellant clearly indicated that the appointment is on ad hoc basis and if the Service Commission does not recommend any of those persons for promotion, the promotion shall cease to be effective. Be it stated that though the appellant was promoted as early as 20th September, 1989, but till the impugned order of the Vice

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Chancellor dated 10.12.1996, the Service Commission has not approved of his appointment as Reader. In the meantime, Section 58 of the Bihar State University Act was amended by insertion of sub-section (10) therein in the year 1993 and under the said sub-section, no appointment would continue for a period exceeding six months unless recommended by the Service Commission. The Vice Chancellor, taking recourse to the aforesaid provision, issued the order of termination and that was assailed by the appellant by filing a writ petition. The learned Single Judge as well as the Division Bench of the High Court came to hold that in view of sub-section (10) of Section 58 of the Bihar State University Act, the order of the Vice-Chancellor is unassailable and as such the writ petition stood dismissed.

Mr. Rajnish Ranjan, the learned counsel appearing for the appellant, contended before us that sub-section (10) of Section 58 would only be prospective in nature and would apply to the appointments made on adhoc basis subsequent to the insertion of the said sub-section and since the appellant's appointment was prior thereto, sub-section (10) would not apply. Mr. Saran, appearing for the University, on the other hand, contended that even if the provisions of sub-section (10) of Section 58 are prospective in nature, but in respect of appointments which have not been approved by the Service Commission, the law would apply and therefore the period of

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six months would apply to those cases also. Having examined the impugned provisions of the Act, we do not think that sub-section (10) of Section 58 would apply to appointments made prior thereto, namely, to the appointments made earlier than 1993. But, at the same time, when a person approaches a Court for issuance of a mandamus, unless he establishes his

right to the post, the Court will not be entitled to issue any writ of mandamus. In view of the very nature of appointment, as indicated in the appointment order of the appellant, to the post of Reader and in view of Section 58 as it stood even prior to the insertion of sub-section (10) therein, an appointment to the post of a Reader could be made only on the recommendation of the Service Commission. The terms of appointment in favour of the appellant also clearly indicate that the appointment is purely adhoc and will cease to be effective if the Service Commission does not approve of the same. For long seven years, the Service Commission had not approved the appointment of the appellant to the post of Reader. In such circumstances, the appellant cannot claim a right of continuance in the post of Reader and the Vice-Chancellor would be well within his jurisdiction to terminate his services by passing the order particularly when the legislative mandate by insertion of sub-section (10) of Section 58 had already become operational by that time. In that view of the matter, we are not inclined to interfere with

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the impugned order of the High Court. This appeal accordingly fails and is dismissed.

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(G.B. PATTANAIAK)@@
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New Delhi,
November 15, 2000.

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(B.N. AGRAWAL)@@
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