IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.22 of 2025
In
Civil Writ Jurisdiction Case No.3979 of 2020

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1. The Nalanda University through Vice Chancellor, Rajgir, District-Nalanda, Bihar-803116.
2. The Vice Chancellor, Nalanda University, Rajgir, District-Nalanda, Bihar-803116.
3. The Registrar, Nalanda University, Rajgir, District-Nalanda, Bihar-803116.

... ... Appellant/s

Versus

1. Dr. Murari Kumar Jha son of Mr. Chandra Kumar Jha, Resident of Village and P.O.-Kahua, Via Benipur, District-Darbhanga, Bihar-847103.
2. The Union of India through Secretary to the Government of India, Ministry of External Affairs, South Block, Central Secretariat, New Delhi-110001.
3. The Secretary, Government of India, Ministry of External Affairs, South Block Central Secretariat, New Delhi-110001.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Adv. with Mr. Amit Kumar Jha, Adv.
For the Respondent No. 1	:	Ms. Sharukh Alam, Adv. Mr. Shantanu Singh, Adv. Mr. Kamaresh Singh, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR

C A V JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 10-04-2026

This Court has extensively heard Mr. Anjani Kumar, learned Senior Advocate with Mr. Amit Kumar Jha, learned Advocate for the appellants-Nalanda University and Ms. Sharukh Alam, learned Advocate with Mr. Shantanu Singh, learned Advocate for the petitioner-respondent no. 1 herein.

2. The present intra-court appeal has been preferred by

the appellants against the judgment and order dated 10.12.2024 passed by the learned Single Judge of this Court in C.W.J.C. No. 3979 of 2020 holding as follows:-

> *"Having heard learned counsel for the parties, considering the entire conspectus of the case and after going through the case records available on record, I am of the considered opinion that so far as the question of extension of Tenure Track is concerned, it is left to the wisdom of the Vice-Chancellor of the University to consider it, especially considering the entire track record and excellent performance of the petitioner within a period of two months, if the petitioner files an application showing his eagerness to rejoin the post. So far as the arrears of the increment, D.A. and other emoluments, if any, are concerned, the University is directed to calculate it in accordance with law and the same is directed to be paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order. If the said payment is not made within the stipulated period, the same shall be made with an interest at the rate of 10% per annum from the date it is due till its payment."*

3. The short facts, relevant for adjudication leading to filing of the present appeal, are summarized herein below:-

(a) Nalanda University, an international university of national importance under the aegis the Ministry of External Affairs, Government of India, is created under the Nalanda University Act, 2010, enacted by the Parliament.

(b) In pursuant to job advertisement dated 19.12.2013, inviting applications for various positions at Nalanda University, including for Tenure Track positions as Assistant Professor, the writ petitioner, holding the requisite qualification, applied for the post of Tenure Track position of Assistant Professor in the School of Historical Studies, Nalanda University, on 03.01.2014. Having gone through the rigors of interview process, the petitioner was declared successful and vide offer letter dated 23.06.2014, he was invited to join the University on the terms and conditions mentioned therein which he accepted and submitted his joining on 01.01.2015. An agreement between the petitioner and the University was reduced to writing in the form of a Faculty Employment Contract on 24.11.2015, *inter alia*, with the stipulation that the appointment is covered and governed by the provisions of the Nalanda University Act, 2010 along with Statutes, Ordinances and Regulations thereunder with further terms of employment that there will be tenure review at the end of 3rd year. Following the

review process, on completion of contract, the services of the employee may be considered for confirmation or termination. On 17.11.2017, the Tenure Contract of the petitioner was extended from 01.01.2018 to 31.12.2018 on the existing terms and conditions.

(c) In the meanwhile, in the month of April, 2018 the petitioner was offered a Post-Doctoral/Visiting Fellowship at the Weatherhead Initiative on Global History at Harvard University, USA for a period of 10 months beginning from August, 2018. On 25.04.2018, the petitioner submitted application for grant of leave without pay from 01.08.2018 to 31.05.2019, copy of which is marked as R/4 to the counter affidavit.

(d) Considering the request, for availing the residential fellowship scheduled to be held with effect from August 01, 2018 as visiting fellow at Weatherhead Initiative on Global History at Harvard University, the Registrar, Nalanda University issued a ‘no objection’ in this regard on 03.08.2018 (Annexure-10) followed by office order dated 23.08.2018 (Annexure-11 to the writ

petition), permitting the same. The petitioner joined his residential fellowship, meanwhile, the faculty employment contract was about to complete and he was unavailable in India for the Tenure Review, vide his letter dated 22.10.2018 requested for extension of his contractual job.

(e) The contract period expired on 31.12.2018; however the petitioner had not received any formal response from the University and he again, on 15.01.2019, requested for extension of his job and thereafter sent a follow up reminder on 30.01.2019. On 18.02.2019, the petitioner received office order bearing no. NU/108/2014-15/83 issued under the signature of the Registrar of the University informing him that the term of the petitioner as Faculty (Assistant Professor-on contract) in the School of Historical Studies has come to a close on December 31, 2018. Request for extension made by the petitioner was duly considered. However, the same has not been approved.

4. In the aforesaid factual background, the petitioner has invoked the prerogative writ jurisdiction of the High Court at Patna by filing C.W.J.C. No. 3979 of 2020 which came to be

disposed off on 10.12.2024.

5. Being aggrieved, the Nalanda University and its authorities challenged the same by filing the present intra-court Letters Patent Appeal. While assailing the impugned office order dated 18.02.2019 various submissions had been led by the learned counsel for the petitioner, *inter alia*, it was submitted that the petitioner was appointed as academic staff by the Governing Board on the recommendation of the Selection Committee constituted in accordance with the Nalanda University Act, 2010, and that the Vice Chancellor has been vested with the power to appoint administrative/ad hoc staff in terms of Section 13 of the Statute, with the approval of the Governing Board. In any event, a decision regarding non-confirmation or non-renewal can be taken only by the Governing Board, and that too only upon the requisite tenure review having been conducted. However, the petitioner received the first notice of non-confirmation on 18.02.2019 under the signature of the Registrar, without the approval of the Governing Board. It was also contended that in the case of the petitioner, no Tenure Review has taken place around or after the expiry of extended contract period, neither any other report nor notice of non-confirmation was given to the petitioner within 45 days. Thus, considering the UGC regulation, the petitioner's

appointment stands confirmed on 45th day. Hence, the order of non-confirmation or non-renewal of contract issued after 45 days on 18.02.2019 is unsustainable.

6. Learned Advocate for the petitioner also submitted that as per the appointment letter/faculty employment contract and UGC Regulation, the Tenure Review is inherent to the contract and, as such, any contract cannot be determined without adhering to the condition precedent to the review. A crystallized right to Tenure Review cannot be defeated by the efflux of time. The Vice Chancellor is said to be the competent authority having been empowered to send the members of the staff for training or for a course of instructions and such Clause is also reiterated in para 2.1 of the Faculty Employment Contract, besides there is UGC Regulation contemplating study leave to avail the opportunity of scholarship/fellowships. It was also contended that had there been any breach of contract, consequential enquiry and disciplinary action could have been undertaken by the appointing authority i.e., the Governing Board, but the same has also not been carried out. It is also argued that if the Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or principle of natural justice, the Court will be fully justified in directing payment of full back wages.

7. The afore-noted contention/arguments had been vehemently confronted by the learned Senior Advocate Mr. Anjani Kumar appearing for the University with the categorical submission that the petitioner was under probation and the terms of contract in probation could not be extended in his *absentia*, therefore, it was not a case of termination, rather non-extension of term along with leave in *absentia*. It was further submitted that Clause 1.1 of Faculty Employment Contract clearly stipulates that the entire period of contract shall be probationary, hence the extension of one year given to the petitioner based upon the existing term was also probationary. Moreover, the petitioner has violated Clause 2.1 of the contract by applying for 10 months residential fellowship in Harvard University without obtaining prior written permission of the University. There is no provision for long leave/loss of pay in the contractual provision, which is probationary. The University has considered the case of the petitioner on individual merit basis as the said fellowship was prestigious one and due to this, his contractual term was relaxed and allowed to avail the fellowship till the date of initial contract upto 31.12.2018. It is further submitted that in terms with Section 33(ii) of the Nalanda University Act, 2010 any dispute arising out of the contract between the University and any employee shall be referred to an Arbitration Tribunal.

8. The learned Single Judge after having given anxious consideration to the submissions advanced by the learned Senior Advocate/Advocates for the respective parties has been pleased to dispose of the writ petition and opined that so far the question of extension of Tenure Contract is concerned, it is left to the wisdom of the Vice Chancellor of the University to consider it, especially considering the entire contract record and excellent performance of the petitioner within two months, if the petitioner files an application showing his eagerness to join the post. The learned Single Judge further directed that so far the arrears of the increment, D.A. and other emoluments, if any, are concerned, the University is directed to calculate it in accordance with law and ensure payment within a period of three months. In case of failure to do so, the same shall carry an interest @ 10% per annum from the date it is due till its payment.

9. Mr. Anjani Kumar, learned Senior Advocate representing the appellants-University, while assailing the order under challenge passed by the learned Single Judge, has primarily taken this Court through the agreement executed between the University and the writ petitioner and submitted with all vehemence that the petitioner was appointed as Assistant Professor as a Tenure Contract position under Faculty

Employment Contract, which is a full time employment for 3 years with effect from 01.01.2015 to 01.01.2018. The entire period of contract shall be probationary and there will be a Tenure Review at the end of the 3rd year in terms with Clause 1.1 of the agreement. Referring to Clause 2.1, it is further contended that the employee was under obligation to devote his time to the service of the University and shall not, without a written permission of the University, engage in any other work/any emoluments or honorarium is attached, except under certain eventualities, including academic activity, with prior permission of the Vice Chancellor, provided it is not against the interest of the University. Referring to Clause 5 of the agreement, he further submits that the same relates to termination of the employee, in the event of violation of the terms of the agreement by the employee in accordance with the provisions contained under Nalanda University Act, 2010, Statutes, Ordinance and Regulation governing the affairs of the University, pursuant to disciplinary action against an employee since the case at hand does not relate to termination on account of misconduct leading to any disciplinary action, the same would not be attracted. Referring to Clause 8, it has further been clarified that the terms and conditions constituting the contract cannot be modified without any written amendments to the

contract.

10. Learned Senior Advocate further submitted that the reliance of the petitioner-respondent over Annexures 10 and 11 is of no help as the same has been issued by the Registrar of the University for the purposes of issuance of visa on the request of the petitioner by relaxing contractual terms only to availing fellowship till the end of the initial contract upto 31.12.2018. Moreover, after completion of the terms of the petitioner as faculty/Assistant Professor on contract, his request for his extension was duly considered but the same has not been approved. The aforesaid decision was taken and approved by the competent authority; hence it cannot be said to be unsustainable. Furthermore, since the non-renewal or non-extension of contractual service does not, in any circumstance, constitute a penal or stigmatic order, any interference or direction to the University to consider the entire track record and performance of the petitioner is unwarranted and, thus, liable to be set aside. Had the petitioner been aggrieved with the impugned order in not extending his contract, he should have availed the remedy under Section 33 of the Nalanda University Act, 2010. He further contended that in identical matter one Saurabh Choudhary has approached this Court in C.W.J.C. No. 5351 of 2020 alleging modifying the contract of the petitioner to his

disadvantage by shortening the extension granted to the petitioner for 3 years. The learned Single Judge directed the writ petitioner of C.W.J.C. No. 5351 of 2020 to approach before the Tribunal of Arbitration as mentioned in Section 33 (ii) of the Act, 2010. However, in the present case, a different view has been taken and the writ petitioner has not been relegated to avail the efficacious statutory alternative remedy.

11. Reliance has also been placed on decisions rendered in the cases of ***Om Prakash Mann vs. Director of Education (Basic) & Ors. [(2006) 7 SCC 558]; State Bank of India & Ors vs. Palak Modi & Anr. [(2013) 3 SCC 607]*** and ***Shamsher Singh & Anr. vs. State of Punjab [(1974) 2 SCC 831]*** to buttress his submission that a probationer has no right to hold the post, and that his service can be terminated at any time during or at the end of the probation period on account of general unsuitability for the post held by him. However, in case the competent authority holds an enquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation, and such enquiry is the basis for taking a decision to terminate his service, then action of the competent authority cannot be characterized as punitive. Conversely, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision of the

competent authority may be nullified on the ground of violation of the rules of natural justice. Since the case of the writ petitioner does not involve an order of termination, but rather the University's decision not to extend the contractual period any further, the impugned order is valid. The direction to the Vice Chancellor of the University to consider the entire track record and performance of the petitioner is, *per se*, illegal.

12. On the other hand, Ms. Sharukh Alam, learned Advocate for the writ petitioner–respondent herein, dispelling the aforesaid contention, submitted at the outset that a Letters Patent Appeal is not a rehearing of the writ petition, and that interference by the Division Bench is permissible only where the judgment of the learned Single Judge is perverse, based on no evidence, or suffers from a jurisdictional or legal error. The grounds in the memorandum of appeal do not identify any such perversity/infirmity. In substance, each of the principal contentions relating to the contractual nature of the appointment, absence of an enforceable right, discretionary tenure review, characterization of the impugned order as a non-extension, and the alleged breach by the respondent was expressly raised, considered, and adjudicated in the impugned judgment. Thus, the submission of the appellant-University seeking re-appreciation of the same material is impermissible in

the limited scope of the Letters Patent Appeal.

13. It is next submitted that where power is required to be exercised by specified authority in a particular manner, it must be so exercised or not at all. Referring to the decision rendered by the learned Single Judge of this Court in ***Prabhakar Sharma vs. Union of India & Ors. [C.W.J.C. No. 261 of 2023]***, it is further submitted that in an analogous context concerning Nalanda University, the Court has held that the Vice Chancellor cannot assume power of termination in absence of contractual or statutory backing and the *post facto* approval by the Governing Body does not cure such a defect. The impugned order has been issued by the Registrar/Vice Chancellor without any decision or approval of the Governing Body.

14. The writ petitioner-respondent was appointed Tenure Track Basis not as *ad hoc* or casual appointee hence a Tenure Review was contractual contemplated but admittedly never conducted. The writ petitioner proceeded on the Harvard fellowship with the prior knowledge and permission of the University and a copy of press release expressing petitioner's appreciation of the prestigious fellowship offered to him clearly demonstrate the encouragement and support of the University besides the invitation made by the University academic council to the petitioner to attend the meeting to be held in the Delhi

office also reinforced that the petitioner was formally granted permission to take up the Post-Doctoral/Visiting Fellowship at the Wheatherhead initiative on Global History at Harvard University. The office order dated 18.02.2019 is apparently non-speaking and assigns no reasons and for this reason alone it is not enforceable in law is the contention of the learned Advocate for the respondent.

15. Ms. Sharukh Alam, learned Advocate further contended that a Tenure Track appointment is a structured tenure progression model leading to tenured or confirmed permanent employment. It presupposes one month evaluation and not unfettered discretion to characterize the entire period as probationary; simultaneously, a promised tenure review makes the tenure track illusory. Acceptance of the Harvard fellowship with the prior knowledge and permission of the University is based on contemporaneous record including no objection letter and official communication to the petitioner cannot be said to be in breach of the contract. The learned Single Judge thus has rightly not granted relief on the basis of leave entitlement but has confined relief to arrears lawfully accrued.

16. Lastly Ms. Alam, learned Advocate for the respondent referred the UGC Regulation dated 18.07.2018 in relation to appointment of teachers and other academic staff in

Universities and Colleges and submitted that the said notification mandates minimum qualification for the post of Senior Professor, Professors and Teachers and other Academic Staff in the Universities and Colleges, wherein the following three step process is recommended for carrying out assessment for promotion under CAS at all levels. The minimum period of probation of teachers shall be one year extendable by a maximum period of one year in case of unsatisfactory performance and the teacher on probation shall be confirmed at the end of one year, unless extended by another year through a specific order. However, it is obligatory on the part of the University/the concerned institution to issue an order of confirmation to the incumbent within 45 days of completion of probation period after following the due process of verification of satisfactory performance.

17. The National Education Policy, 2020 issued by the Ministry of Human Resources Development, Government of India also reinforced the motivated, energize and capable faculty members which could be the important factor in the success of higher education institution. Referring to a decision rendered by the learned Division Bench of the High Court of Orissa at Cuttak in ***Kunja Bihari Panda & Ors. vs. State of Odisha & Ors. [2022 SCC OnLine Ori 440]***, it is strenuously contended

that keeping with the vision of autonomous institution empowered to drive excellence higher educational institutions should have clearly defined independent and transparent process and criteria for Faculty recruitment, whereas the current recruitment process will be continued, and a Tenure Track i.e., “suitable probation period shall be put in place to further ensure excellence.” The action of the appellant University is said to be a classic example of vindictiveness and malice in law, and a complete violation of the precious right to life; thus, no interference with the impugned order is warranted. It is, therefore, prayed that the Letters Patent Appeal be dismissed and that the University be directed to implement the order forthwith.

18. After giving anxious consideration to the submissions advanced by the learned Senior Advocate for the appellants as well as the learned Advocate for the respondent no. 1 and perusing the order passed by the learned Single Judge, the primal issues imperative for adjudication of this intra-court appeal are formulated as follows:

(i) Whether the pleas expressly raised, considered and adjudicated by the learned Single Judge in a writ petition can be re-agitated in the Letters Patent Appeal?

(ii) Whether the impugned letter dated 18.02.2019 refusing the petitioner's request for an extension of contract as Faculty (Assistant Professor-on contract) is cryptic, devoid of any reason and/or punitive/stigmatic and/or termination simplicitor in nature;

(iii) Whether non-extension of contract leading to end of the probation without Tenure Contract Review is violative of contract agreement and thus vitiates in law, and

(iv) Whether the Vice Chancellor or the Governing Board is the appropriate authority to take a decision of non-extension of contract once the appointment of the petitioner on the post of Assistant Professor on contract was made after approval of the Governing Board?

(v) Whether the writ petition was maintainable despite the alternative remedy available under the Nalanda University Act, 2010?

19. **Issue no. I:-** ***Whether the pleas expressly raised, considered and adjudicated by the learned Single Judge in a writ petition can be re-agitated in the Letters Patent Appeal?***

19.1. An application under Clause 10 of Chapter IX of

the Letters Patent Appeal of the Patna High Court Rules, 1916 is an appeal conferred under Letters Patent by providing an internal working of the High Court keeping in mind that such intra-court appeal is not an appeal against an order of a subordinate court, rather Letters Patent Bench sits as a “Court of correction” corrects its own order in exercise of the same jurisdiction as was vested in the Single Bench.

19.2. In ***Bihar Industrial Area Development & Ors. v. Scope Sales Pvt. Ltd. [2026 SCC OnLine SC 112],*** the Hon’ble Supreme Court while crystallizing the nature and extent of an intra-court appellate Bench of a High Court has observed that both Single Bench and Division Bench exercise the same jurisdiction under Article 226 of the Constitution of India. The exercise of intra-court appeal jurisdiction is warranted only where the judgment or order under challenge is demonstrably erroneous or suffers from perversity. Such jurisdiction ought not to be invoked merely because another view is possible on the same set of facts, particularly where the view adopted by the Single Judge is a plausible and reasonable one. The Hon’ble Court while explaining scope of Letters Patent Appeal took note of various decisions including, one rendered in the case of ***Baddula Lakshmaiah v. Sri Anjaneya Swami Temple [(1996) 3 SCC 52]*** where the Court held as follows:

> *"**2.** Mr Ram Kumar, learned counsel for the appellants, inter alia contends that the Letters Patent Bench of the High Court could not have upset a finding of fact recorded by a learned Single Judge on fresh reconciliation of the two documents, arriving at different results than those arrived at earlier by the two courts aforementioned. Though the argument sounds attractive, it does not bear scrutiny. Against the orders of the trial court, first appeal lay before the High Court, both on facts as well as law. It is the internal working of the High Court which splits it into different 'Benches' and yet the court remains one. A letters patent appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of a subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error. So understood, the appellate power under the Letters Patent is quite distinct, in contrast to what is ordinarily understood in procedural language. That apart the construction of the aforementioned two documents involved, in the very nature of their import, a mixed question of law and fact, well within the powers of the Letters Patent Bench to decide. The Bench was not powerless in that regard."*
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> (emphasis ours)

19.3. This Court also takes note of the decision rendered by the learned co-ordinate Bench of this Court in LPA No. 649 of 2025 ***[Chanda Sinha vs. The State of Bihar***] where the Court has observed that the Division Bench in Letters Patent Appeal should not disturb the finding of fact arrived at by the

learned Single Judge of the Court unless it is shown to be based on no evidence, perverse, palpably unreasonable or inconsistent with any particular position of law. The scope of interference is within a narrow compass. Appellate jurisdiction under the Letters Patent is really a corrective jurisdiction and it is used rarely only to correct the errors, if any, made.

19.4. Keeping in mind the aforesaid settled position and responding to Issue no. I, this Court is of the opinion that the pleas expressly raised, considered and adjudicated by the learned Single Judge normally ought not to be re-adjudicated merely because another view or better view is possible. However, there is no bar to re-agitate such plea if the finding is based on no evidence, perverse, palpably unreasonable or inconsistent with any particular position of law. Further the parties are always at liberty to raise a mixed question of facts and law, besides any plea touching the jurisdiction of the authority/court.

20. **Issue no. II**:- ***Whether the impugned letter dated 18.02.2019 refusing the petitioner's extension of contract as Faculty (Assistant Professor-on contract) is cryptic, devoid of any reason; and/or punitive/stigmatic; and/or termination simplicitor in nature?***

20.1. Before responding to the issue formulated

hereinabove, we deem it proper to recapitulate the significant rulings of the Hon'ble Supreme Court, which, in the opinion of this Court, has crystallized the position of a probationer/contractual employee.

20.2. Well settled it is that the temporary government servant or probationers are as much entitled to the protection of Article 311(ii) of the Constitution as permanent employee, despite the fact that they have no right to hold the post and their services are liable to be terminated at any time by giving a month's notice in terms of the contract or service or under the relevant statutory rules regulated the terms and conditions of such service, if in any way not punitive and stigmatic in nature. In the case of ***Parshotam Lal Dhingra vs Union of India [AIR 1958 SC 36]***, the Hon'ble Supreme Court summed up the issue that the application of Article 311 of the Constitution even in the case of probationer or temporary employee, any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not *per se* dismissal or removal. If the termination of service is founded on the right flowing from contract or the service rules then, *prima facie*, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has,

by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. The Hon'ble Supreme Court further observed and crystallized that use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to see as to (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of a servant must be taken as a dismissal or removal from service and if the requirements of rules and Article 311, which grants protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant.

20.3. In the case of ***Shamsher Singh*** (supra), the Hon'ble Supreme Court has re-emphasized the position

enunciated by the Hon'ble Supreme Court in the case of ***Parshotam Lal Dhingra*** (supra) and held 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."*

20.4. In the case of ***Palak Modi*** (supra) the Hon'ble Supreme Court while reinforcing the afore-noted settled

position has further clarified 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."*

20.5. In ***Anoop Jaiswal vs Government of India & Anr. [(1984) 2 SCC 369],*** the Hon'ble Supreme Court highlighting various previous decisions of the Court has cautioned that where the form of the order is merely a camouflage for an order of dismissal for misconduct, it is open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.

20.6. Though there are series of decisions on the above referred issues, which need not be recapitulated, however, recently in the case of ***Pinki Meena v. High Court of Judicature at Rajasthan [(2025) SCC OnLine SC 1214],*** the Hon'ble Supreme Court held as follows:

> *"**24.** The services of a probationer could result either in a confirmation in the post or ended by way of termination simpliciter. However, if a probationer is terminated from service owing to a misconduct as a punishment, the termination would cause a stigma on him. If a probationer is unsuitable for a job and has been terminated then such a case is non-stigmatic as it is a termination simpliciter. Thus, the performance of a probationer has to be considered in order to ascertain whether it has been satisfactory or unsatisfactory. If the performance of a probationer has been unsatisfactory, he is liable to be terminated by the employer without conducting any inquiry. No right of hearing is also reserved with the probationer and hence, there would be no violation of principles of natural justice in such a case.*
>
> ***25**. As noted, if a termination from service is not visited with any stigma and neither are there any civil consequences and nor is founded on misconduct, then, it would be a case of termination simpliciter. On the other hand, an assessment of remarks pertaining to the discharge of duties during the probationary period even without a finding of misconduct and termination on the basis of such remarks or assessment will be by way of punishment because such remarks or assessment would be stigmatic. According to the dictionary meaning, stigma is indicative of a blemish, disgrace indicating a deviation from a norm.*

> *Stigma might be inferred from the references quoted in the termination order although the order itself might not contain anything offensive. Where there is a discharge from service after prescribed probation period was completed and the discharge order contain allegations against a probationer and surrounding circumstances also showed that discharge was not based solely on the assessment of the employee's work and conduct during probation, the termination was held to be stigmatic and punitive vide Jaswantsingh Pratapsingh Jadeja vs. Rajkot Municipal Corporation, (2007) 10 SCC 71."*
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> ***Emphasis supplied***

20.7. In the light of the rulings referred hereinabove, coming to the case at hand, there is no dispute that the writ petitioner had accepted the offer and entered into an agreement for his appointment to the post of Faculty (Assistant Professor-on contract) in School of Historical Studies for a period of 3 years between 01.01.2015 to 01.01.2018. The faculty employment contract made it clear that the entire period of contract shall be probationary and there will be a Tenure Review at the end of 3rd year post which the services of the employee may be considered for confirmation or termination. Clause 1 and 2.1 of the agreement clearly said that the petitioner was appointed on full time employment with an expectation that he shall devote full time to the service of the University and shall not without the written permission of the University will indulge

in any other academic activities without prior permission of the Vice Chancellor, provided it is not against the interest of the University. The University undoubtedly, on the request of the petitioner, issued 'No Objection' on his visit to Harvard University and there was approval of the competent authority as it appeared from Annexures-10 and 11 to the writ petition. The petitioner left the University in the month of August, 2018 for his joining at Harvard University U.S.A. to do his 10 months residential fellowship.

20.8. In the afore-noted factual position to answer the second issue now we take up the reference of ***Gridco Limited & Anr. Vs. Sadananda Doloi & Ors., 2011 (15) SCC 16,*** wherein, the order of Division Bench of Orissa High Court came to be challenged before the Hon'ble Supreme Court. The issue *inter alia* was of that in contractual appointment the termination thereof vitiated by any legal infirmity to call for interference under Article 226 of the Constitution. Referring to various decisions governing the field of pre-conditions for termination of a contractual employment, the Hon'ble Apex Court held that with the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of termination order passed by public authority and determine whether there was any illegality, perversity,

unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. The Court further observed that they cannot sit in the armchair of the administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances, as long the action taken by the authority is not shown to be vitiated by the infirmities referred above or is demonstrably in outrageous defiance of logic. The Apex Court, setting aside the Division Bench order, reinforced that the renewal of contract of employment is depended upon the perception of the management as to the usefulness of the respondent and the need of an incumbent in the position held by him. Both these aspect rested entirely in the discretion of the corporation. However, the Courts can lift the veil of an innocuously worded order to look at the real face of the order, to find out whether it is as innocent as worded *vide* ***Parshotam Lal Dhingra (supra)***.

20.9. In view of the above discussions and pronouncement of law, this Court has no slightest hesitation to hold that a probationer ought to have been at least sounded about his performance during the period of probation. The services of a probationer must be seriously and properly assessed. In case of any deficiency in his service, he must be warned regarding such failure; merely because the employee is

appointed on probation and as soon it is completed, he cannot be thrown out of employment arbitrarily *vide* ***Krishnadevaraya Education Trust & Anr. vs. L.A. Balakrishna, (2001) 9 SCC 319***.

20.10. Notwithstanding the aforesaid settled position of law, the facts of the case at hand clearly demonstrate that the probation period of the writ petitioner was extended for a further period of one year after the completion of initial contractual period of three years, hence *prima facie* this Court is of the opinion that the services rendered by the writ petitioner for three years not persuaded the University to confirm his services and accordingly, his contractual period was extended and treated to be on probation, which has not been questioned at any point of time. Since the petitioner left the University and accepted the Post Doctoral/Visiting Fellowship in the month August 2018 itself, and the period of contract has further expired on 31.12.2018, the University has come out with the impugned order dated 18.02.2019 and refused to accede the request of the petitioner for an extension, which in the considered opinion of this court could not be termed as termination order on account of any deficiency, but the same has been taken in the interest of the University as, there can't be any tenure track review in his prolonged absence. The Hon'ble Supreme Court, in ***Gridco Ltd.***

(supra) has reminded that in the modern commercial world, executives are engaged on account of their expertise in a particular field and those who are so employed are free to leave or to be asked to leave by the employer. Contractual appointment work only if the same are mutually beneficial to both the contracting parties and not otherwise. The said principle, now a days, applies in all the field aiming to maximize growth/productivity, learning innovation and success.

20.11. Moreover, the learned Single Judge has not interfered with the impugned order dated 18.02.2019 and once the impugned order having not been set aside by the learned Single Judge, which was put to challenge before him or held to be bad in the eyes of law; any direction that so far the question of extension of ‘Tenure Track’ is concerned, it is left to the wisdom of the Vice Chancellor of the University to consider it, especially considering the entire track record and performance of the petitioner within a stipulated period is unwarranted and cause an incongruous and an anomalous position for the University. Hence, this Court finds the order dated 18.02.2019, is neither punitive/ stigmatic nor the petitioner has been discontinued on account of his deficiency, rather it is only an order simplicitor, not extending the contractual period after termination of the period of contract. The issue no. II answered

accordingly.

21. **Issue no. III**:- ***Whether non-extension of contract leading to end of the probation without Tenure Contract Review is violative of contract agreement and thus vitiates in law?***

21.1. So far the issue no. III formulated by this Court, the Hon'ble Supreme Court has underscored that the services of every probationer must be seriously and properly assessed, as the probationer is a new entrant in the career and at the very threshold, he cannot be scuttled from rise of the career. Thus, there should be an effort of the employer to assess the services or the work performance of the probationer.

21.2. In the case of ***Abhujit Gupta vs. S.N. B. National Centre, Basic Sciences & Ors. [(2006) 4 SCC 469]***, the Hon'ble Supreme Court placing reliance upon the decision in ***Dr. Mrs. Sumati P. Shere vs. Union Of India & Ors. [(1989) 3 SCC 311]*** has observed that it is the duty of the employer to inform the employee on probation about his deficiency from time to time so that the employee may improve himself. It would be worth benefiting to quote para-9 of the said decision.

> *"**9**. In Sumati P. Shere (Dr.) v. Union of India [(1989) 3 SCC 311 : 1989 SCC (L&S) 471 : (1989) 11 ATC 127] this Court pointed out that an employee on probation should be subjected to assessment of work and should be made aware of*

the defects in his work and deficiencies in his performance. The Court observed:

> *"Defects or deficiencies, indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, ... it would be arbitrary to give a movement order to the employee on the ground of unsuitability."*

It is the duty of the employer to inform the employee about his deficiencies from time to time so that the employee may improve himself."

21.3. It is also worth noting here that in the case of ***State of U.P. vs. Akbar Ali Khan, AIR 1966 SC 1842,*** it has been observed that in case an employee is allowed to continue in the post even after the period of probation without passing an order of confirmation, the only possible view to take is that by implication the period of probation was extended.

21.4. In ***Shri Kedar Nath Bahl vs. State of Punjab & Ors.*** reported in **(*1974) 3 SCC 21*** the Supreme Court has been pleased to lay down that:-

> *"where a person is appointed as a probationer in any post and a period of probation is specified it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of specified period or there is a specific service rule to*

> *that effect, the expiration of probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post the result merely is that he continues in his post as a probationer."*

21.5. No doubt the probation period of an employee is the period of trial extending opportunity to the employee to perform to the best of his ability and to the employer to observe his performance and to make up his mind regarding his confirmation. Since in the case at hand, the petitioner before completion of his probation period, post the permission of the competent authority of the University, accepted the prestigious Fellowship; admittedly he was not present in the University for ten months period till June, 2019. In absence of the petitioner, irrespective of the fact the agreement entered into by the petitioner, the University prescribed that there will be a tenure review at the end of the contractual period, the same could not have been possible as the petitioner had left the University in the month of August, 2018 itself and the period of contract has finally expired on 31.12.2018. There is no doubt regarding academic prowess of the writ petitioner, but any University or the institution is concerned with the worthiness and usefulness of a faculty

member, whose presence is required to impart education to the students who takes admission in the University with an expectation to get best teaching from an expert faculty member. In view of the aforesaid facts, even though this Court held that, in terms with the agreement, the Nalanda University Act, 2010 and the statutes, tenure review was required, but in the facts of the present case, in a prolonged absence of the petitioner, the same could not be done and for which the University cannot be blamed.

22. **Issue no. IV**:- ***Whether the Vice Chancellor or the Governing Board is the appropriate authority to take a decision of non-extension of contract once the appointment of the petitioner on the post of Assistant Professor on contract was made after approval of the Governing Board?***

22.1. Now coming to the issue no. IV after going through the Nalanda University Act 2010; Section 7 thereof provides for formation of a governing body consisting of (a) The Chancellor; (b) The Vice Chancellor; (c) Five members from amongst the members States which provides maximum financial assistance during a period of three years to be nominated by the member States; (d) One member not below the rank of Secretary in the Ministry of External Affairs to be nominated by the Central Government; (e) Two members

representing the State Government of Bihar to be nominated by the State Government; (f) one member not below the rank of Additional Secretary in the Ministry of Human Resource Development, to be nominated by the Central Government; and (g) three members from amongst the persons being renowned academician or educationist to be nominated by the Central Government. Section 8 provides the powers and functions of the Governing Board. Section 10 deals with the power of University and Clause XXI under Section 10 provides one of the power to regulate and enforce discipline among the employees and students to take such disciplinary measure in this regard, as may be deemed by the University to be necessary. Further the Nalanda University Statutes 2012, especially Statute 3 provides power and functions of the Governing Board, which prescribes under Statute 3(j) that the Governing Body shall appoint Professor, Associate Professor and Assistant Professor on the recommendation of the Selection Committee constituted for the purpose and fix or alter the salaries and service condition of the employees of the University. Statute 12 prescribe for appointment of Vice Chancellor and Statute 13 provides the power of the Vice Chancellor. The Vice Chancellor shall in terms with statute 13(f) with the approval of the Governing Board have the power to appoint employees, consultant,

retainers and fix their remuneration commensurate to the nature of services offered. Further Statute 13(g) clearly prescribes that the Vice Chancellor with the approval of the Governing Board have the power to create academic and non-academic posts and make appointments to such posts on contract basis (including on ad-hoc and temporary basis), wherein from one year to three years subject to the terms and conditions of any statutes, ordinances or regulations, as may be applicable from time to time.

22.2. A bare perusal of the office order pertaining to appointment of the petitioner as an Assistant Professor on contract, it is manifest that the same was issued in pursuance of the approval of the Governing Board of Nalanda University who is said to be the competent authority to extend the appointment on the post of Assistant Professor, even on contractual basis, as per the terms of the statutes referred hereinabove. Further, the office order dated 17.11.2017, whereby the Tenure Track position of petitioner was extended for a period of one year from 01.01.2018 to 31.12.2018, had also been issued with the approval of the competent authority, duly signed by the officiating Registrar. Similarly, coming to the impugned order dated 18.02.2019, the same is also found to be issued with the approval of the competent authority. It is trite law that the

presumption is always in favour of the *bonafide* of the order unless it is contradicted by acceptable materials [Vide ***Kiran Gupta & Ors. vs. State of U.P. & Ors., (2000) 7 SCC 719***]. In absence of any material shown by the petitioner that the same has not been issued by the approval of the Governing Board, the Court cannot adjudicate the issue by accepting the argument of the writ petitioner as gospel truth, once the order says otherwise that it has been issued by the approval of the competent authority. Hence, in the opinion of this Court, the impugned order dated 18.02.2019 is found to be issued after getting the approval of the competent authority which in the opinion of this Court in terms with the Rules, 2010 and the Statute, 2012 is the Governing Board. The issue number IV is answered accordingly.

23. **Issue no. V:**- ***Whether the writ petition was maintainable despite the alternative remedy available under the Nalanda University Act, 2010?***

23.1. Coming to the issue number V, pertaining to the entertainment of the writ petition despite having efficacious remedy available under Section 33(2) of the Nalanda University Act, 2010, suffice it to observe that bare reading of the same it is evident that the dispute arising out of the contract between the University and any employee shall be referred to the Tribunal of

Arbitration at the request of the employee, only whereupon Tribunal of Arbitration shall consist of one member appointed by the Governing Board, one member nominated by the employee concerned and an umpire appointed by the visitor. The learned Single Judge has rightly come to the conclusion that section will come into play only when the writ petitioner/ concerned employee expresses his desire to refer the matter to an Arbitration Tribunal.

23.2. Express desire and volition of the employee has been accorded prominence; as consent, either express or implied, is *sine qua non* for arbitration. Notwithstanding the aforesaid position, it is well settled that rule of exclusion of writ jurisdiction in case of alternative remedy is rule of discretion and not a rule of compulsion. The access to High Court by way of a writ petition under Article 226 of the Constitution is not a constitutional right, but also a part of the basic structure. The power to issue prerogative writ under Article 226 of the Constitution is plenary in nature and the same is not limited by any provision of the Constitution and cannot be restricted or circumscribed by a statute. Reference may be taken to a decision rendered by the Hon'ble Supreme Court in the case of ***Tamil Nadu Cements Corporation Limited vs. Micro and Small Enterprises Facilitation Council and Anr., (2025) 4***

SCC 1.

24. Having answered all the issues hereinabove, this Court is of the opinion that the learned Single Judge despite having not interfered with the impugned order dated 18.02.2019 or held it to be unsustainable in law as well as on facts acceded its jurisdiction to direct the University to consider the entire track record and performance of the petitioner within a period of two months by leaving it to the wisdom of the Vice Chancellor of the University in relation to answer the question of extension of Tenure Track. Consequently, the order of the learned Single Judge dated 10.12.2024 to the extent whereby the learned Single Judge has opined that so far as the question of extension of Tenure Track is concerned, it is left to the wisdom of the Vice Chancellor of the University to consider it, especially considering the entire track record and excellent performance of the petitioner within a period of two months, if the petitioner files an application showing his eagerness to rejoin the post, is held to be unsustainable in law as well as on facts and accordingly, set aside to the extent afore-noted.

25. So far as the direction of the learned Single Judge to the extent the University is directed to calculate the arrears of increment, DA and other emoluments are concerned, this Court does not find any reason to interfere with the same

and accordingly direct the University to ensure the compliance of such order as directed by the learned Single Judge instantly, without any further delay, in accordance with law.

26. The present intra-court appeal stands allowed partly, to the extent indicated hereinabove.

27. No order as to cost.

(Harish Kumar, J)

Sangam Kumar Sahoo, CJ: *I agree.*

(Sangam Kumar Sahoo, CJ)

Anjani/-

AFR/NAFR	AFR
CAV DATE	24.03.2026
Uploading Date	10.04.2026
Transmission Date	N.A.