IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 5776 of 2010

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Dr. Nehal Ahmad, Son of Late Md. Sadruddin, Resident of White House, Mewa Sao Lane, Sultanganj, Patna, District- Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Vice Chancellor, Magadh University, Bodh Gaya.
4. The Registrar, Magadh University, Bodh Gaya.
5. The Finance Officer, Magadh University, Bodh Gaya.
6. The Registrar of Ranchi University Ranchi, Jharkhand, Ranchi.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Amarendra Narayan & Mr. Deepak Kumar, Advocates.
For the State	:	Mrs. Nivedita Nirvikar, G.A. 10
For the University	:	Mr. K. N. Singh, Sr. Advocate. Mr. Pranav Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL ORDER

11. 24.12.2014 Heard learned counsel for the parties.

Supplementary counter affidavits have been filed on behalf of the State as well as the University showing that all necessary orders for payment to the petitioner under Scheme-A of the Statutes for grant of retirement benefits to employees of Bihar/Ranchl/Bhagalpur/Magadh/L. N. Mithila/ K.S.D. Sanskrit University (hereinafter referred to as the 'Statute') granting benefit of the G.P.F.-cum-Pension have been issued in favour of the petitioner. Learned counsel submits that actual payment shall also be made within one week.

The controversy still remains as to whether whatever has been done by the respondents is in accordance with law in view of the statutory provisions as well as the conduct of the petitioner.

The issue basically relates to interpretation of the Statute approved by the Chancellor dated 18.11.1980 and amended on 25.11.1982.

The brief undisputed fact of this case is that the petitioner was originally employee under the Ranchi University and his service was transferred to Magadh University in the year 1991. The petitioner as per the provisions of the Statute, while at Ranchi, had opted for Scheme-C but much beyond the cut off date of three months. Later a letter was issued by the Registrar of Magadh University dated 18.04.1995 by which employees were given one more chance to opt for any one of the schemes. The petitioner did not exercise his option pursuant to the letter dated 18.04.1995. He finally superannuated on 31.03.2003.

As the Statute did not provides for any extension of time beyond three months for exercising option and various Universities including the Magadh University had come out asking for fresh option from their employees, the Hon'ble Chancellor after due consideration amended the Statute by inserting Clause- 4B. The petitioner thereafter retired in the year 2003.

Learned counsel for the petitioner submits that once in terms of second proviso of Clasue-3 of the Statute if an employee did not exercise his option within the period prescribed then it would be deemed that he had opted for the scheme as set out in Appendix-A, despite the fact that they have been permitted to contribute to the Contributory Provident Fund benefit prior to the promulgation of the rules. He further refers to Clause-4. According to him any option exercised by the petitioner beyond a period of three months as per Clause-4 of the Statute was no option in the eyes of law and automatically the petitioner had to be deemed to have opted to the scheme set out in Appendix-A, i.e., G.P.F.-cum-Pension. Learned counsel further submits that pursuant to the letter dated 18.04.1995, the petitioner not giving any option to the University, his case remained under the scheme enumerated under Appendix-A of the Statute. Learned counsel submits that as per the second proviso of Clause-3 of the Statute the fact that the petitioner kept contributing to Contributory Provident Fund would not ipso facto take away his right to be covered under the scheme set out in Appendix-A. It is submitted that even the Statute provides for return of the contribution taken by the concerned under the Contributory Provident Fund in lieu of getting pensionary benefits. Learned counsel submits that the Courts have held that if an employee does not exercise option within the statutory period of three months or him exercising any option after the said period, would automatically be deemed to have opted for the scheme set out in Appendix-A.

Learned counsel for the University and learned counsel for the State have taken the stand that the petitioner having initially opting for the scheme enumerated in Appendix-C while at Ranchi University, as per Rule 5 (i) of the statute was not allowed to change over to any scheme other than what was already opted in the old University and thus cannot claim or be given benefit under scheme set out in Appendix-A of the Statute. It is further submitted that the petitioner has also taken the benefit under the Contributory Provident Fund scheme and had approached the Court for the first time after three years of his superannuation and furthermore he never asked the University to be shifted to the scheme under Appendix-A of the Statute.

Learned counsel for the petitioner submits that in the earlier round of litigation when the petitioner has come to the Court in C.W.J.C. No. 15142 of 2006, it has been recorded that the petitioner was willing to refund the amount under the Contributory Provident Fund scheme in one lump sum amount. The petitioner was directed to file a representation before the Vice Chancellor on the earlier occasion and was supposed to consider and dispose off the same within a period of two months. The same not having been done, the petitioner filed M.J.C. No. 2753 of 2008 which was disposed off on 09.12.2009 on the ground that the respondents had rejected the claim of the pension of the petitioner due to him having failed to exercise option within 90 days of coming into force of the scheme and liberty was granted to challenge the same in a fresh proceeding and accordingly, the present writ application has been filed.

After having considered the rival contentions, this Court finds that as per the terms of the original Statute any option given by a party within three months had to be taken note of and failure to exercise any option within three months, would automatically have resulted in the concerned employee to be deemed to have opted under the scheme set out in Appendix-A of the Statute. Thus, the option given by the petitioner before the Ranchi University being beyond three months as stipulated by the Statute was no option in the eyes of law and without any consequence whatsoever. Further, the petitioner not having exercised his option pursuant to the opportunity given by letter dated 18.04.1995, also cannot be said to be governed by either the terms of the said letter or the amended Section 4B since clearly 4B states that **'all the employees to whom these Statutes apply and who joined service of the University/Constituent colleges before 1st April, 1978 and are still in service or have retired and provided with fresh option after the cut off date fixed in earlier Statutes and have already given their option to the University'** shall be given the benefits set out at Appendix-A of the retirement benefit statutes'. It was further provided in Clause-4B that the University shall not provide fresh option henceforth. Thus, a harmonious reading of the proviso of Clause-4B of the validating amendment clearly leads to the conclusion that it was for the purposes of validating the option given by various Universities subsequent to the Statute and beyond the period prescribed in the Statute. The petitioner not having given his option pursuant to the fresh option given by the University dated 18.04.1995, is neither covered by Clause-4B of the statute nor by any of the terms and conditions of the letter of the University dated 18.04.1995. Even in the Case of **Vyas Narain Singh v. B. R. Ambedkar Bihar University** reported in **2007(1) PLJR 241**, the Court had held that the concerned employee who has got the benefit as enumerated in Appendix-A shall have to return the payment made to him under the Contributory Provident Fund scheme. The decision of the Court in the case of **Baidya Nath Choudhary Vs. The State of Bihar & Ors.** (**C.W.J.C. No. 16404 of 2007**) and analogous cases dated 15.03.2013 also reiterates the view taken by this Court where in paragraph 19 it has been held that 'The use of expression **"and provided with fresh option after cut off date fixed in earlier statute"** as used in Clause -4B read in such perspective can only mean to cover all those cases where original options for non-pensionable schemes were revised by fresh options under Scheme-A after due date'.

In the present case admittedly the petitioner had neither opted for any scheme within the period prescribed under the original Statue nor applied for any fresh option pursuant to the letter of the University dated 18.04.1995.

Accordingly, the petitioner is held entitled to the benefit under the scheme enumerated under Appendix-A of the Statute. The petitioner having been ordered to be paid the arrears under scheme set out in Appendix-A of the Statue by the respondents, let the actual payments be made by 15th January, 2015. The University shall furnish to the petitioner details of the amount taken by him under the Contributory Provident Fund scheme which shall be adjusted by the University before releasing payment under the scheme to which the petitioner has been held entitled to as set out in Appendix-A to the Statute.

The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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