IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2317 of 2014

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M.M. Patnaik S/O - T.M. Patnaik Resident Of Ganesh Colony, Door No. - 23-145, Sriniwas Nagar, Simhachalam Road, Vishakhapatnama - 530028, Andhra Pradesh (Former Associate Professor , Statistics Department, Patna College, Patna)

.... Petitioner/s

Versus

1. Patna University Through Its Registrar , Patna
2. The Vice Chancellor, Patna University, Patna
3. The Registrar, Patna University, Patna
4. The Financial Advisor, Patna University, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv
For the Respondent/s : Mrs. Soni Srivastava, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

5 13-02-2015 Heard learned counsel for the parties.

2. The petitioner in this writ application has prayed for the following reliefs:-

> *"For issuance of an appropriate writ/writs, order/orders, direction/directions to the respondents to pay earned leave amount to the petitioner which is due after grant of V.R.S w.e.f. 31.08.2012 by quashing letter no.-G154 dated 08.02.213 whereby and under in purported exercise of power u/s 24(E) of Patna University Act earned leave has been refused.*
>
> *For issuance of an appropriate writ/writs, order/orders, direction/directions to the respondent to pay earned leave amount to the petitioner along with interest as similar situated persons namely Ranjan Prasad Yadav & Late Dr. Vinod Kumar Thakur has been paid after they obtained V.R.S from the University."*

3. Mr. Sanjay Kumar, learned counsel for the petitioner in support of the aforementioned prayer has straightway proceeded that there is nothing in the statutes which debars, a teacher of Patna University taking voluntary retirement, from being denied the benefit of leave encashment which is only part of retirement benefit. In this regard, he has also cited examples of at least two teachers namely, Dr. Ranjan Prasad Yadav and Late Dr. Vinod Kr Thakur. According to him both the aforesaid persons had been paid leave encashment after their taking voluntary retirement.

4. Mrs. Soni Srivastava, learned counsel appearing on behalf of Patna University also relies on the same provision of the statutes to make out a case that since the expression used in clause-24(e) of the satutes lays down for payment of leave encashment only in respect of University employees on superannuation or death in active service, the case of the petitioner of one being voluntary retirement will not be covered for such leave

encashment. She also explains that the University having itself in the state of confusion had made repeated correspondences with the State Government by way of seeking clarification but nothing has been intimated to the University as yet.

5. In the considered opinion of this Court, the provision of leave salary being fully circumscribed by the statute, there was no need for the University to either abdicate its own power, in the process of taking decision in the case of the petitioner or move the State Government for any clarification. Clause 24 of the statutes in fact reads as follows:-

> *"24(a) A University servant on earned leave will be entitled to leave salary at a uniform rate equal to the average monthly pay earned during twelve complete months preceding the month in which the leave commences.*
>
> *(b) A University servant on half pay leave or leave not due will be entitled to leave salary equal to half the leave salary admissible on earned leave.*
>
> *(c) A University servant on commuted leave will be entitled to leave salary equal to twice the amount admissible under clause (b) above.*
>
> *(d) A University servant on extra ordinary leave for purpose of study, in which case the Syndicate may grant leave salary equal to half the salary admissible on earned leave, provided the total period of leave does not exceed three years.*
>
> *(e)<u>The University employees on superannuation or death in active service shall get the amount equal to</u>*

leave salary of the period of unavailed earned leave subject to the following conditions-

(i) The amount of leave salary will be limited to the unavailed earned leave not exceeding 180 days.

(ii) The leave salary will be paid in one lump at the time of retirement.

(iii)The dearness allowance will be paid equal to the amount of D.A. payable for the period concerned at the time of retirement. The city allowance and the house rent will, however, not be paid alongwith the leave salary.

(iv) The authority competent to sanction earned leave shall sanction such leave salary on superannuation.

(v) The above provisions shall apply to those employees who retire from the service of the University on attaining the age of superannuation on or after 30-9-1977."

6. From bare reading of the aforementioned portion of the statute and in its clause-24 (e) in particular will itself go to show that the leave salary is admissible under certain contingency, including at the time of superannuation or death in active service. Thus, when there is a very clear provision for that type of employees, who ceases to be employee of the University either on account of death or on account of superannuation, it can be very well said that the leave encashment in any form of superannuation is admissible provided the leave is due, to the employee. This Court,

therefore, on a plain reading of clause-24 (e) of the statutes is of the considered view that it does not exclude such of teachers of the Patna University taking voluntary retirement from availing the benefit of leave encashment.

7. The expression ‘superannuation’ used in clause-24(e) in fact will be wide enough to include any person whether it be occasioned on account of superannuation on completion of attaining prescribed age of retirement or even on account of disability, or also voluntary retirement as per the provisions of the statute requiring of completion of minimum of length of service. The only requirement in any of these conditions of superannuation for being paid the leave encashment would be that the employee on the date of his superannuation must not have exhausted his earned leave and must have sufficient leave to his credit which could be encashed by him as prescribed in Clause-24 of the statute.

8. In the present case, when the petitioner had taken voluntary retirement after completion of 39 years of service, he had admittedly about 222 days of earned leave to his credit and that cannot be confiscated by the Patna University by withholding the amount of leave encashment because it is not the case of the University in the counter affidavit that the petitioner was dismissed from service.

9. This court would find that the plea of discrimination also will go to support the case of the petitioner because he has named at least two teachers of the Patna University namely Dr. Ranjan Prasad Yadav and Dr. Vinod Kumar Thakur who have been given such benefit of payment of leave encashment when they had also taken voluntary retirement. Thus, both law as well as practice followed by Patna University would support the case of the petitioner for getting benefit of leave encashment.

10. In that view of the matter, this writ application is allowed and the respondents are directed to pay admissible amount of leave encashment to the petitioner forthwith.

(Mihir Kumar Jha, J)

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