# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.7123 of 2013**

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Ram Babu Mehta Son Of Late Ram Narayan Mahto Resident Of Mohalla - Ram Babu Colony, Arfabad, Police Station - Alamganj, Patna - 800007, District - Patna

.... .... Petitioner/s

Versus

1. The Patna University Through Vice - Chancellor, Patna
2. The Vice - Chancellor, Patna University, Patna
3. The Registrar, Patna University, Patna
4. The Population Research Centre Through Head Of The Department Of Statistics - Cum - Director, Population Research Centre, Patna University, Patna
5. The Ministry Of Health and Family Welfare Statistics Division (PRC) Secretary Ministry Of Health and Family Welfare, Government Of India, New Delhi
6. The Director, Ministry Of Health and Family Welfare, Govt. Of India, New Delhi

.... .... Respondent/s

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WITH

**Civil Writ Jurisdiction Case No.8544 of 2013**

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Ali Imam Son Of Late Md. Ushman Resident Of Alamganj, Peervais, Police Station - Alamganj, Patna - 800007, District - Patna

.... .... Petitioner/s

Versus

1. The Patna University through Vice-Chancellor, Patna
2. The Vice - Chancellor, Patna University, Patna
3. The Registrar, Patna University, Patna
4. The Population Research Centre through Head Of The Department Of Statistics-Cum-Director, Population Research Centre, Patna University, Patna
5. The Ministry Of Health and Family Welfare Statistics Division (PRC) Secretary Ministry Of Health and Family Welfare, Government of India, New Delhi
6. The Director Ministry of Health and Family Welfare, Government of India, New Delhi

.... .... Respondent/s

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**Appearance :**

(In CWJC No.7123 of 2013)

For the Petitioner/s : Mr. Shrawan Kumar, Sr. Advocate
Mr Dinesh Maharaj

For the Patna University : Mr. Digvijay Singh
Mr B.J.Jha

For Union of India : Mr Md. AnisAkhtar, CGC

(In CWJC No.8544 of 2013)

For the Petitioner/s : Mr. Shrawan Kumar, Sr. Advocate

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| | | Mr Dinesh Maharaj |
| For the Patna University | : | Mr. Digvijay Singh |
| | | Mr B.J.Jha |
| For Union of India | : | Mr Md. AnisAkhtar, CGC |



**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

CAV JUDGMENT

**Date: 15-01-2015**

The two writ applications have common prayer as well as common facts as such, therefore, were heard together and are being decided together. Ram Babu Mehta retired as Analyst and Ali Imam as a Senior Upper Division Assistant from Population Research Centre, Department of Statistics at Patna University. The respective date of retirement is 30.11.2012 and 31.8.2012.

2. The facts behind the present litigation is that on an advertisement published in a local newspaper way back on 25.1.1979 (Annexure- 1), the petitioners applied. Mr Mehta was an applicant for the post of Computer Analyst. He was selected and appointment letter was issued. He joined the post on 2.5.1979 but went on leave on ground of illness. Besides, he also had to be relieved by the previous employer, namely, United Bank of India. He finally joined on 31.8.1979. It is his case that he was even promoted to the post of Research Officer in the scale of Rs.2200- 4000, which would be evident from Annexure- 6 to the writ application. However, in the year 2003, he was sent back as Analyst which post he held till his retirement. Post retirement, he made an application before the

Registrar, Patna University for fixation of his pension, which is Annexure- 7 but since nothing came out of it, he decided to move the High Court.

3. So far as Mr Ali Imam is concerned, he was working as a daily wage Typist under the respondent no.4, which is the Population Research Centre. He came to be regularized on the post of Typist with a pay scale in terms of Annexure-8. In the year 1985, he was promoted to the post of Upper Division Clerk then as a Senior Assistant in September 2000. He too after superannuation applied for post retiral dues. Since nothing was heard from the respondent authorities of the Patna University, he decided to approach the High Court.

4. Learned Senior Counsel representing the petitioners submits that right from the day of their selection and appointment it is the Patna University, which has been exercising control over their service. There is a master servant relationship between Patna University and them. Various communications would show that it is the Patna University, which has been taking various decisions in relation to them but for strange reason now the respondents are refusing to grant benefit of pension and retiral dues after their superannuation on one plea or the other. He also harps on the fact that various communications contained as Annexures, would show that the

letters have been issued by the Patna University under the signature of the various functionaries of the University so case for mandamus is made out.

5. The respondent Patna University was directed to file their counter affidavit and explain the reason of non-payment of so-called rightful due of the petitioners after superannuation.

6. The University has taken a stand that the Population Research Centre, which was formerly known as Demographic Research Centre, was creation of the Ministry of Health and Family Welfare, Statistics Division, Government of India in terms of the letter dated 20.7.1965. The said communication is Annexure- A to the counter affidavit. The necessary grant for payment of salary and other allowances of the employees working under the Centre was being released by the Ministry of Health and Family Welfare, Government of India every financial year. The directives issued by them from time to time was being followed by the respondent University and the Centre is basically a baby of the Ministry of Health, Government of India. The said Centre was only attached with Patna University for the purposes of administrative control of the University but at no point of time any master servant relationship was established between Patna University and the two petitioners. The employees working under PRC worked under the project

independently and the University was not empowered to take any decision on them over and above the directives issued by the Ministry.

7. Right from the beginning the terms and conditions of such Centre and the object thereof was governed by the Ministry of Health and Family Welfare, Government of India and in terms of such directive and scheme the employees working in the said project were not entitled to any pension because such service was not made pensionable. The petitioners have been contributing towards contributory provident funds since the date of their joining and the settlement in terms of their entitlement has already been made. Details of payment made have also been indicated in paragraph 12 of the counter affidavit of the University.

8. The University also fairly takes a stand that the University has no objection if the Ministry of Health and Family Welfare, Government of India sanctions money for pension to the petitioners and the University will not come in the way. It is also urged on behalf of Patna University that University has no funds of its own to make provisions for payment of pension to the petitioners or any such employees of the Population Research Centre and further since such Centre was working under the scheme of the Central Government, the liability cannot be fixed upon the State Government for payment of their pension because they are not University

employees.

9. Rejoinders on behalf of the petitioners have been filed and on the basis of some of the communications and Annexures it is harped that the complete administrative control of the Demographic Research Centre was at the hands of the University authorities. The decision with regard to their promotion etc. was taken by the authorities of the Patna University and whatever directives have been issued by the University, the petitioners have faithfully followed the same. Effort has been made by learned Senior Counsel for the petitioners to impress upon this Court that for all practical purposes it was the Patna University which was the employer and obligation of Patna University to pay pension etc. remains.

10. On the stand taken by the Patna University the Court also directed the Union of India to file a counter affidavit and a counter affidavit on behalf of respondents no.5 and 6 i.e. Ministry of Health and Family Welfare, Statistics Division has been filed. They have given the background, the object behind setting up of such Population Research Centre. 18 such Centres are functioning across the country. 12 are located in the Universities and others are located in institutes of repute. Details scheme has also been annexed with the said counter affidavit. They do not take any responsibility for payment of pension etc. but they do take a plea that Universities could

encourage them to opt for pension scheme but that has to be done from their own funds and arrangements. There was no commitment by Government of India in this regard. The grant-in-aid released to such Universities is limited to the object and purpose for which such Centres were set up decades ago.

11. After many adjournments an affidavit came to be filed on behalf of the petitioners indicating therein that in some other States provision for pension has been provided for and in this regard some documents relating to the arrangement made in the State of Orissa and Gujarat has been brought on record.

12. The Court has gone through the entire scheme of things, the so-called decisions taken by the Patna University and the communications made right from the day of selection etc. in relation to these petitioners. A careful look at those communications does indicate that all the communications does talk of Population Research Centre as an independent entity and identity. From a perusal of the scheme annexed in the counter affidavit of the Union of India it is evident that attachment of this Centre with the Patna University was a decision of the Ministry of Health and Family Welfare, Statistics Division, Government of India. Grant-in-aid for such employees was being provided and there is no scheme for payment of pension to such employees. Even by a broad and a liberal interpretation of the

documents this Court cannot come to a conclusion that these petitioners are employees of Patna University in any manner. No doubt, for coordination and control, administrative exercise of power over the Centre and for proper utilization of grant-in-aid was routed through Patna University. But these petitioners are not employees of Patna University and under the scheme of things and statutory provision relating to the Bihar Universities or Patna University Act, the University does not have any provision for generating resources of its own for meeting any financial obligation of any person of the University. Every penny or outlay is made by the State of Bihar through grant-in-aid released in favour of the Universities across the State including Patna University.

13. If this is the position which emerges from the pleadings then if the prayer of the petitioners are allowed, the petitioners would virtually become employees of Patna University and an obligation would be created upon the State of Bihar to pay them pension lifelong when they have in no capacity either served the State of Bihar or the Patna University directly. After the affidavit of the Ministry of Health and Family Welfare, there cannot be any iota of doubt that the Population Research Centre is not part and parcel of Patna University. It is a creation of Union of India and is running through grant-in-aid released by the Ministry.

14. If this is so, this Court is not impressed by the interpretation sought to be given by the learned Senior Counsel that a case is made out for payment of post retiral benefit and pension to them by Patna University. Writ application, therefore, cannot be allowed. The petitioners will be governed by the scheme of things and since the Central Government has not provided for any scheme for grant of pension and post retiral dues, these petitioners cannot beget that benefit.

15. So far as such employees of Orissa and Gujarat are concerned, it is clarified by Union of India in its counter affidavit that it was left open to the local Universities to make such arrangements, if they could. But under the scheme of things in the State of Bihar since no University is financially capable of meeting any obligation and all liability, if created of such kind, will be required to be made by the State of Bihar, it will be totally unfair as well as inequitable to create a liability on the State of Bihar in favour of employees, who have nothing to do with the State of Bihar or the University set up by them under statute.

Writ applications, therefore, stand dismissed.

**(Ajay Kumar Tripathi, J)**

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