IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19555 of 2011

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1. Raghav Prasad S/O Late Adalat Singh R/O Village- Itawa, P.O.- Itawa, Distt.- Siwan, At Present Practising As An Advocate In The High Court Of Judicature At Patna

.... Petitioner/s

Versus

1. The Magadh University, Bodh Gaya Through The Registrar Of The University
2. The Vice Chancellor, The Magadh University, Bodh Gaya
3. The Registrar, The Magadh University, Bodh Gaya
4. The State Of Bihar Through The Principal Secretary Hrd Deptt., Govt. Of Bihar Of Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RAGHAV PRASAD(INPERSON)
For the Respondent/s : Mr. RAMYANA, SC-30
For Magadh University Mr. PRANAV KUMAR

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL. JUDGMENT

Date: 29-04-2015

1. The petitioner in the present application under Article 226 of the Constitution of India has sought for a direction to grant him benefits of full pension on completion of 20 years of service as a Teacher in a constituent College of Magadh University. To appreciate the basis of his claim, certain facts need to be dealt with, first.

2. The petitioner was a teacher in Mathematics in J. D. Women's College, Patna which is a constituent Unit of Magadh University, Bodhgaya. He retired while holding the post of a Reader with effect from 30.9.2001. He received, thereafter, his pensionary benefits and other retiral dues.

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3. The Statutes approved by the Chancellor of the Universities of the State of Bihar vide letter no. BSU-52/80-5285 G.S. (I) dated 18.11.1980 as amended by letter No. BSU/52/80/2158 G.S.(I) dated 25.11.1992 governs the retirement benefits payable to the employees of the Universities of Bihar, Bhagalpur, Magadh, L.N.Mitihila and K.S. D Universities in the State of Bihar. Clause 16 of Section II of Appendix A reads as follows:-

> "16. An employee eligible for pension under any of the categories mentioned above, shall be granted pension according to the scales given in Schedule 'A' (i) if he ceased to be in University service between 1.4.1972 and 31.12.1972 and schedule A (ii) if he ceased to be in University service between 1.1.73 and 30.3.79. For those who ceased to be in University service from 31.3.79 onwards, the scales given in Schedule A (iii) will be applicable. Any further change in the rate of pension as also relief in pension under the Bihar (Govt.) Pension Rules will be equally applicable to the University employees."

4. This is not in dispute that the Union Government, on the basis of recommendations made by the Sixth Central Pay Revision Commission, issued orders on 01.09.2008 revising the pension of the Central Government employees, who had retired prior to 01.01.2006. The State Government of Bihar on the basis of recommendations made by the Sixth Central Pay Revision Commission has also revised the pension of the employees of the State Government who had retired prior to 01.01.2006, through resolution No.137 dated 23.9.2009. On

the basis of the said resolution of the State Government, the retired employees of the State Government are getting revision pension with effect from 01.01.2006 (notionally) and actual payment is being made to them with effect from 01.04.2007.

5. In tune with Clause 16 of Section II of Appendix A to the 1982 Statutes, as quoted above, which deals with retirement benefits of the employees of the University, a decision has been taken to extend similar benefit to the employees of the University for revision of his pensionary benefits with effect from 01.01.2007.

6. In the counter affidavit filed on behalf of the University, no dispute has been raised as regards invoking Article 16 of Section II of Appendix A to the 1982 Statutes. A statement has been made in paragraphs 6,7 and 8 of the counter affidavit as follows:-

> "6. That it is stated that the petitioner has claim in the light of the Article 16 of the Pension Statute read with the decision of the State Government vide Notification No. 819 dated 23.9.2009 by which the retired employees would get pension in revised pay scale as per 6th Pay Commission. Hence the pension of the petitioner has already been revised and arrears of revised pension in proportionate as the State Government has released, the balance amount of arrear pension in revised pay scale will be paid subject to availability of fund from the State Government.
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> 7. That it is stated that the pension of the petitioner in revised new pay scale in light of the State Government order has been fixed to Rs. 18630/- per month as per the relief admissible from time to time according to new pay scale.

> 8. That it is stated that the arrear of the revised pension for the period 1.4.2007 to 31.7.2012 amounting to Rs. 1,13,034/- has already been paid to petitioner through PPO Order No. 2061/04 dated 9.7.2014 and the arrear pension for the period 1.4.2007 to 31.7.2012 amounting to Rs. 80,849/- has also been paid to petitioner through PPO Order No. 2061/04 dated 8.5.2013."

7. The aspects as regards revision of payment of post retiral dues to the petitioner with effect from 01.06.2007 is no more in dispute. This aspect was earlier raised before this Court by other persons. Reference may be made in this regard to the decision of this Court in case of Hari Ram Vs. State of Bihar and ors decided on 30.4.2013 (CWJC No. 20041 of 2012). Paragraphs 41 and 42 reads as follows:-

> "41. I may also note here that no binding precedent was cited by the learned Principal Additional Advocate General with regards to a case where a right ordinarily occurring was granted to a group while taking it away for another group and it was held to be valid by any Court. All judgments cited related to petitioner seeking extension of benefit given to another group to them. They were all cases of extension sought and not deprivation as challenged in the present case. Last month's pay being retrospectively enhanced for all but the State, by this pension resolution, gives benefit of this to a group and deprives the benefit to another when it comes to revising gratuity based on last month's pay. This is nothing but hostile and capricious discrimination not permissible under Article 14 of the Constitution.
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> 42. To conclude, that for calculating gratuity, depriving a groups of retirees of the benefit that would accrue to them by virtue of retrospective

> pay revision, while allowing the benefit of the retrospective pay revision to another group similarly situated as done by the pension revision notification dated 23.09.2009, cannot be sustained as legal and valid. It is per se unfair, capricious, arbitrary, unreasonable and is a hostile discrimination as also violative of Article 14 of the Constitution and in conflict with the Constitution Bench judgment in the case of D.S. Nakara case (supra) which clearly prohibits sub-classification of a homogeneous group without valid reason or rational. The result is that the clauses of the said notification, which deprives the petitioner of the right to get his gratuity revised as per the retrospective pay revision, has to be held to be illegal and, thus, unenforceable. Petitioner would thus be entitled to revision of his gratuity on the basis of the retrospective revision of the pay scale but the same would be restricted to the maximum of Rs.3.50 lacs."

8. It is in this background that the petitioner in the present writ application has claimed that he is entitled to get the benefits of full pension on completion of 20 years of service as the employees of the State Government retiring after 01.01.2006 have been made entitled to, in the light of the said resolution dated 23.9.2003 and not 33 years. As would be evident from the fact which I have noted above that the petitioner retired on 30.9.2001 after completion of 26 and half years of service. His plea is that instead of proportionate pension which he was entitled to get on the date of his retirement on 30.9.2001 on completion of 26 and half years of continuous service, he should be given the benefits of full pension as

20 years of qualifying service for full pension has been prescribed subsequently vide resolution dated 23.9.2009.

9. The petitioner has appeared in-person and has vehemently relied upon Supreme Court decision in case of D.S. Nakara Vs. Union of India reported in (1983) 1 SCC 305. It appears from the supplementary affidavit filed on behalf of the petitioner that such claims were raised earlier before this Court and this Court by an order dated 15.5.2014 passed in CWJC No. 176 of 2013 (Raksha Ray Vs. State of Bihar & Ors) and other analogous cases had held in paragraph 9 as follows:-

> "9. In view of the above, the Court comes to a considered opinion that the benefit of only 20 years of service for pension would be extended to all such persons, who has superannuated on or after 1.4.2007 instead of 23.9.2009, the date of the notification. The relevant clause of Resolution No. 137/08 is hereby struck down and the writ applications are allowed in terms of the above."

10. The said decision of this Court is directly against the plea which the petitioner has been taken that he would be entitled for full pension as he had completed more than 20 years of service, on the date of his retirement on 30.9.2001.

11. However, since the petitioner in person has laid great emphasis on Supreme Court decision in case of D. S. Nakara (supra) in order to contend that fixing up a cut off date for grant of full

pension is arbitrary and illegal and in breach of Articles 14 and 16 of the Constitution of India, I intend to deal with the submission with reference to subsequent Supreme Court decisions wherein the ratio laid down by the Supreme Court in case of D. S. Nakara (supra) has been dealt with.

12. After the Supreme Court judgment in case of D.S. Nakara Vs. Union of India (supra), the ex-serviceman of the three wings of Armed Forces of this country took a plea before the Supreme Court that the retirees who held the same rank, irrespective of their date of retirement must get the same amount of pension. In substance, they claimed before the Supreme Court "one rank, one pension" for all retirees of Armed Forces, irrespective of their date of retirement. A five Judge Bench of the Supreme Court rejecting the claim led in its decision reported in (1991) 2 SCC 104 (Indian Ex-services League & ors. Vs. Union of India and other) in paragraph 12 as follows:-

> "12. After an exhaustive review of almost all decisions bearing on the question of Article 14, this Court speaking through Chandrachud, C.J. in *In re Special Courts Bill*, 1978[3] restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are: (SCC pp. 424-25, para 72)
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> "* * *

(3)The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4)The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

* * *

(6)The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act."

13. The said decision of the Apex Court in D.S. Nakara

came to be considered subsequently by the Supreme Court in case of Union of India vs. P.N.Menon reported in (1994) 4 SCC 68 over a dispute arising out of recommendations of 3rd Central Pay Commission. The Union Government, in the light of certain recommendations of the 3rd Central Pay Commission vide office memorandum dated 25.5.1997 had introduced a scheme to treat a portion of the dearness allowance as pay in respect of Government servants, who retired on or after 20.9.1977 for the purpose of reckoning their pension and gratuity. With reference to different pay ranges, it had fixed the amount of dearness pay which was to be counted as emoluments for pension and gratuity in terms of Rule 33 of the Central Civil Services (pension) Rules, 1972. However, in case of Officers drawing pay above Rs. 2180 and retiring on or after 1.12.1978, the amount of dearness pay to be treated for the purpose of retirement benefits was specified in office memorandum, which enabled persons who retired on or after 30.9.1977 but not later than 30.4.1979, to exercise an option out of the two alternatives, of getting pension and death-cum-retirement gratuity, calculated either by excluding the element of dearness pay or by including the element of dearness pay. The said classification was challenged before the Supreme Court on the ground of it being arbitrary and violative of Articles 14 and 16 of the Constitution of India. Considering the law laid down in case of D. S. Nakara (supra), the Supreme Court in case of P.N.Menon (supra) held in paragraph 8 and 14 as follows:-

> "8. Whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints. It is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post retirement benefits, if implemented with a cut off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. It shall not amount to "picking out a date from the hat", as was said by this Court in the case of D.R. Nim Vs. Union of India 2 in connection with fixation of seniority. Whenever a revision takes place, a cut off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government.
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> 14. According to us, for the reasons disclosed on behalf of the appellant- Union of India for fixing 30.9.1977 as the cut off date, which date was fixed when the price index level was 272, cannot be held to be arbitrary. The decision to merge a part of the dearness allowance with pay, when the price index level was at 272, appears to have been taken on basis of the recommendation of the Third Pay Commission. As such it cannot be held that the cut off date has been selected in an arbitrary manner. Not only in matters of revising the pensionary benefits, but even in respect of revision of scale of pay, a cut off date on some rational or reasonable basis, has to be fixed for extending the benefits. This can be illustrated. The Government decides to revise the pay scale of its employees and fixes the Ist day of January of the next year for implementing the same or the Ist day of January of the last year. In either

> case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December of the year in question, will miss that pay scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the Court should only be, while examining any such grievance, to see as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations."

14. From the law laid down by the Supreme Court which have been noted hereinabove, I do not find any merit in the petitioner's contention that he would be entitled for full pension on the ground that subsequent to his retirement in the year 2011, rules relating to payment of full pension were revised and eligibility of 33 years of continuous service was brought to 20 years, the same should be applied in his case also. Reliance place by Mr. Raghav Prasad, learned counsel for the petitioner on Supreme Court judgment in case of Union of India & ors. vs. SPS Vains (Retd.) and others reported in (2008) 9SCC 125 has no application to the petitioner's claim of grant of full pension, which he was not entitled to, on the basis of rules applicable on the date of his retirement in the year 2001 and subsequent amendment with respect to qualifying service for grant of full pension reducing the qualifying age, cannot be applied in case of

persons who retired prior to 01.04.2007.

15. This application is accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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