

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1210 of 2013

IN

Civil Writ Jurisdiction Case No 17072 of 2012

- =====
1. Dr. Nawal Kishore Choudhary Son Of Late Raghunath Choudhary Resident Of Village- Shreerampur Ayodhya, P.O. And P.S. Waini, District- Samastipur, Bihar
 2. Dr. Ram Prasad Yadav Son Of Late Kunj Bihari Yadav Resident Of Village- Adharpur, P.O. And P.S. Khangraitha (Baheri), District- Darbhanga, At Present Residing At B2/9, Rau Campus, Pusa P.S.O. And P.S. Pusa, District- Samastipur
 3. Mahendra Prasad Singh Son Of Sri Sant Bilas Singh Resident Of Village- Sarkar Tola, Bihar Agriculture College Campus Sabour, P.O. And P.S. Sabour, District- Bhagalpur, Bihar
 4. Dr. Ram Raksha Singh Son Of Late Mahendra Singh Resident Of Village And P.O. Maughour, P.S. Warsaliganj, District- Nawada

.... Appellant/s

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of Agriculture, Government Of Bihar, Patna
2. The Principal Secretary, Department Of Agriculture, Government Of Bihar, Patna
3. The Principal Secretary, Human Resources Development Department, Government Of Bihar, Patna
4. Joint Secretary, Human Resources Development Department, Government Of Bihar, Patna
5. Rajendra Agricultural University, Bihar Pusa (Samastipur) Through The Registrar
6. Vice Chancellor, Rajendra Agricultural University, Bihar Pusa, District- Samastipur
7. Director Administration, Rajendra Agricultural University, Bihar Pusa, District- Samastipur
8. Bihar Agriculture University, Sabour, Bhagalpur Through Its Registrar
9. Vice Chancellor, Bihar Agricultural University, Sabour, Bhagalpur
10. Director Administration, Bihar Agricultural University, Sabour, Bhagalpur

.... Respondent/s

WITH

Letters Patent Appeal No 1361 of 2013

IN

Civil Writ Jurisdiction Case No. 16772 of 2012

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Ram Sanahi Chaudhary Son Of Late Umakant Chaudhary Resident Of Bihar Agriculture University Campus, P.S. And P.O.- Sabaur, District- Bhagalpur

.... Appellant/s

Versus

1. The State Of Bihar Through Principal Secretary, Department Of Agriculture, Bihar, Patna
2. The Principal Secretary, Department Of Agriculture, Bihar, Patna
3. The Principal Secretary, Human Resource Department, Government Of Bihar, Patna

4. The Joint Secretary, Human Resource Department, Government Of Bihar, Patna
5. The Bihar Agriculture University At Sabaur, Bhagalpur Through Its Registrar, Having Office At Sabour, Bhagalpur
6. The Vice Chancellor, Bihar Agriculture University At Sabour, Bhagalpur, Having Office At Sabour, Bhagalpur
7. Associate Dean Cum Principal, Bihar Agriculture College, Sabaur

.... Respondent/s

WITH
Letters Patent Appeal No 1365 of 2013
IN
Civil Writ Jurisdiction Case No 13570 of 2012

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Dr Gokulesh Jha Son Of Late Ramrekha Jha Resident Of Village- Kanhauli
Ajrakwe, Krishnapuri Colony, Police Station- Mithanpura, District-Muzaffarpur

.... Appellant/s

Versus

1. The State Of Bihar Through Principal Secretary, Department Of Agriculture, Bihar, Patna
2. The Principal Secretary, Department Of Agriculture, Bihar, Patna
3. The Principal Secretary, Human Resource Department, Government Of Bihar, Patna
4. The Joint Secretary, Human Resources Department, Government Of Bihar, Patna
5. The Rajendra Agricultural University, Bihar Through Its Registrar Having Its Headquarters At And Post Office Pusa, Police Station Pusa, District- Samastipur
6. The Vice-Chancellor, Rajendra Agricultural University, Bihar At And Post Office Pusa, Police Station Pusa, District- Samastipur
7. The Director Of Administration, Rajendra Agricultural University, Bihar At And Post Office Pusa, Police Station Pusa, District- Samastipur

.... Respondent/s

WITH
Letters Patent Appeal No 1367 of 2013
IN
Civil Writ Jurisdiction Case No 17347 of 2012

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Indradeo Narayan Sharma Son Of Late Ashkaran Ray Resident Of Professor
Colony, Durga Sthan, Katihar, Police Station- Katihar And Post Office-
Tingachhiya, District- Katihar

.... Appellant/s

Versus

1. The State Of Bihar Through Principal Secretary, Department Of Agricultural, Bihar, Patna
2. The Principal Secretary, Department Of Agriculture, Bihar, Patna
3. The Principal Secretary, Human Resources Department, Government Of Bihar, Patna
4. The Joint Secretary, Human Resources Department, Government Of Bihar, Patna
5. The Bihar Agricultural University At Sabaur, Bhagalpur Through Its Registrar, Having Office At Sabaur, Bhagalpur
6. The Vice Chancellor, Bihar Agriculture University At Sabaur, Bhagalpur Having Office At Sabaur, Bhagalpur

7. The Associate Dean-Cum-Principal Bihar Agriculture College, Sabaur

.... Respondent/s

WITH
Letters Patent Appeal No 71 of 2014
IN
Civil Writ Jurisdiction Case No 16614 of 2012

=====

Dr Binod Bihari Prasad Sinha Son Of Late Chhote Narayan Residend Of Sector J/28 Peoflis Co-Operative Colony, Kankar Bagh Police Station Kankarbagh, District- Patna

.... Appellant/s

Versus

1. The State Of Bihar Through The Principal Secretery, Agriculture Department, Govt. Of Bihar Having His Office At Vikash Bhawan, P.S. Sachivalaya, District- Patna
2. The Bihar Agriculture University, Bihar Through Its Registrar Having His Office At Sabour Bhagalpur, P.S. Sabour, District- Bhagalpur
3. The Vice Chancellor, Bihar Agriculture University, Bihar Having His Office At Sabour, P.S. Sabour, District Bhagalpur
4. The Director Of Administration, Bihar Agriculture Univercity Bihar Having His Office At Sabour, P.S. Sabour, District- Bhagalpur

.... Respondent/s

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For the Appellant/s : Mr Y V Giri, Sr Advocate with
M/s Raju Giri, Anand K Ojha, Mukeshwar Dayal,
Vikash Mohan, Advocates

For the University : Mr Devendra Kr Sinha, Sr Advocate with
M/s Anil Kr Upadhyay, Chandra Mohan Singh,
Prakash Mahto, Samir Kr Sinha, Advocates

For the S t a t e : M/s Subhash Pd Singh, GA VII, M K Singh, SC I,
Ghanshyam Sharma, AC to GA 7, S K Karn,
AC to SC I, Asit Kr Jha, AC to GP 6

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE MR JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 15-05-2015

Heard Shri Anand K Ojha for the appellants, learned
counsel for the State and learned counsel for the University and with

their consent, these appeals are being disposed of at this stage itself.

2 The appellants, in all these five appeals, are teachers or teaching scientists in the Agriculture Universities in the State of Bihar being the Bihar Agriculture University and Rajendra Agriculture University. Originally, they had filed writ petitions in the year 2010 seeking mandamus to the State and the Universities to increase the age of superannuation from 62 to 65 years. The writ petitions were filed in the year, 2010 being CWJC No 13450 of 2010 and analogous case. The position was contested both by the University and the State of Bihar and ultimately those writ petitions were allowed by learned Single Judge of this Court by judgment and order dated 15.09.2011. It would be relevant to quote the operative part of the said judgment :

“23 State of Bihar as well as the University are directed to take immediate steps to ensure the enhancement of age of superannuation of the employees like the petitioners of the Agricultural University to 65 years. They shall be entitled to continue in service till they reach the new age of superannuation. If during the pendency of the writ application they have been made to retire, then they all have right to claim their position back on the post they were working till they reach the new age of superannuation.”

(emphasis supplied)

3 It appears that both the University and State, being aggrieved by this judgment, filed intra-Court appeal being LPAs No

37 of 2012, 145 of 2012, 304 of 2012. All these Letters Patent Appeals were then withdrawn by the State and University on 30.08.2012. This date would be relevant because by then State had already taken a decision to accept the judgment aforesaid which decision is dated 12.07.2012. It is this decision to which we shall refer shortly.

4 While the Letters Patent Appeals were pending, it seems State constituted a Committee to recommend as to how the judgment had to be implemented. The recommendation was made on 17.04.2012 which, as noted above, was formalized and accepted by the State with additional conditions and stipulations on 12.07.2012. Seeing the conditions that were being imposed which were apparently in conflict with the judgment of this Court, the appellants filed applications before this Court for initiating contempt proceedings against the State. But as it was pointed out that the Letters Patent Appeals were pending, the contempt applications were permitted to be withdrawn. As noted above, thereafter the Letters Patent Appeals were withdrawn by the State and the University. Thus, the judgment and order of the learned Single Judge, as quoted above, became final and fully operative.

5 Now, we may refer to the Government Resolution dated 12.07.2012 which is the bone of contention between the parties.

By this Resolution, State Government accepted that the increased age of superannuation from 62 to 65 would be effective from 30.06.2010. No one has grievance in this regard. But what followed in the said Resolution, if we may say with due humility, was contemptuous. First by paragraph 3 i, it was provided that all the terminal benefits that persons, who were now entitled to extended period of service and who had received the same, they would have to refund the same. There cannot be any dispute with regard to this. Then we come to paragraph 3 ii. Learned Single Judge, as noted above, had clearly held that those persons, who had been made to superannuate during pendency of the writ petition, would be entitled to join and claim all benefits as if they had not superannuated and would superannuate as per the new extended period. Shri D K Sinha, learned Senior Counsel appearing for the University and learned counsel for the State do not dispute that the plain and simple meaning of the judgment of the learned Single Judge is that they would be deemed to be continuing in service with all privileges. But when we see this paragraph 3 ii what is done is that the interregnum period, that is from the date of their superannuation to the date of their rejoining, that period would be treated as earned leave effectively cancelling all leave entitlement. We must keep in mind that the period between their superannuation and their reinstatement could be anything upto two years and,

therefore, the period of two years was to be treated as earned leave to be adjusted from all leave available. It has yet another implication. On retirement, a person is entitled to a maximum of 300 days of accumulated earned leave encashment. Effectively, this paragraph 3 ii cancels that entire entitlement. Is it not in derogation to the judgment and order of the learned Single Judge first rendered which had attained finality? In our considered opinion, it is deliberately calculated to cause harm to the Teachers and the Scientists and is contrary to the judgment of the learned Single Judge. Then when we come to paragraph 3 iii, it is provided that when they rejoined, they would join on the same pay scale and the same grade pay which they were last receiving meaning thereby ignoring the passage of time in between 2010 to 2012 and any increment due therein. This is again in teeth of the judgment of the learned Single Judge. As noted above, the contempt applications having been withdrawn because of pendency of LPAs which were also subsequently withdrawn, the appellants were advised to file writ petitions again challenging these onerous conditions imposed contrary to the judgment which were binding on all the parties and which attained finality. The matter was then taken up by the learned Single Judge in CWJC No 13570 of 2012 and analogous cases. The learned Single Judge heard the matter at length and disposed of the writ petitions partially allowing by

judgment and order dated 23.07.2013, being aggrieved by which these Letters Patent Appeals have been filed. We have gone through the judgment of the learned Single Judge in this second round of litigation and would quote the relevant paragraphs :

“25 In view of directions of this Court noted above, the petitioners would deem to have continued notionally in service but as they admittedly did not work in the intervening period, they would not be entitled to salary. However, such period would not be adjusted against earned leave, as the petitioners in terms of the Court’s order continued notionally in their posts.

26 Thus part of Clause ii, which states that the period between retirement and rejoining would be adjusted against earned leave, is struck down. Nonetheless, I hold that the petitioners would not be entitled to any salary for the period they had not worked.

27 Clause iii states that on rejoining, the employees would get salary in basic grade admissible at the time of retirement. It is well settled that on restoration of service one would be entitled to the same emoluments which he/she was receiving just prior to forced retirement. The petitioners as such would be entitled to the emoluments which they were receiving on just prior to alleged retirement.”

6 We are surprised. As noted above, the learned Single Judge, in the first round of litigation, clearly held and gave the appellants complete continuity of service with all privileges, as would be evident from paragraph 23 of the judgment quoted earlier. That

had attained finality by virtue of the Letters Patent Appeals filed by the State and the University having been withdrawn and became binding inter party. What the learned Single Judge, in the second round of litigation, has done is he has virtually rewritten the first judgment. This is absolutely impermissible. The learned Single Judge, in the second round of litigation, was bound by the judgment of the first round of litigation. He was neither sitting in appeal nor had he jurisdiction to alter the judgment nor does judicial decorum permits such an approach. If anything it was his duty to implement the binding precedent which was binding inter party as well. Instead he denies what was given by the first judgment by saying that they would not be entitled to any salary for the interregnum period though the learned Single Judge, in the first round of litigation, clearly held that there would be complete continuity and they would have all rights to claim their position till their new age of superannuation. The learned Single Judge, in the impugned judgment, was, thus, clearly in error in so holding. There is yet another reason why the learned Single Judge, in the second round of litigation, was wrong on this count. He has relied upon the principles of no work, no pay to deny wages to these Lecturers. We can do no better than quote from the Constitution Bench judgment since reported in the case of *Union of India –Versus- K V Jankiraman*, AIR 1991 Supreme Court 2010:

“We are not much impressed

by the contentions advanced on behalf of the authorities. The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him.”

7 Here, we may note that right from 2010, the appellants were contending that they were entitled to continuity and State was bound to extend their age of superannuation. It was the State and the University that they kept them out of service and were forcing them to superannuate.

8 The Apex Court in the case of *Nirmal Chandra Bhattacharjee and others –Versus- Union of India and others, 1991 Supp (2) Supreme Court Cases 363* held thus:

5 *The mistake or delay on the part of the department, therefore, should not be permitted to recoil on the appellants.”*

9 The learned Single Judge, in the first round of litigation noticing this aspect, has clearly said that they would be entitled to claim their position back on the post which, as already noticed, would mean continuity in all aspects would be restored. If this be not the principle then the State could very well say that you had a right. I slept. Your right is lost. Can that ever be accepted? All I can do is quote what Chief Justice **Chagla** said in the case of **All**

***India Groundnut Syndicate Limited -Versus- Commissioner of
Income Tax, Bombay City, AIR 1954 Bombay 232 :***

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person - we take it that the Income-tax Department is included in that definition - can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default.”

10 The second grievance of the appellants is that they cannot be put in the same pay scale or the same grade pay in the year 2012 when they rejoined which they were drawing at the time of their superannuation in the year, 2010. They are correct. Because if this is permitted then the increments and other emoluments in the interregnum period has to be ignored. That was not the import of the first judgment. To that extent again, the learned Single Judge, in the impugned judgment, was not correct. The learned Single Judge, in the impugned judgment, has already struck down the restrictions that was imposed with regard to treating the period as interregnum period as earned leave. We need not delve on this aspect.

11 Thus, we have no option but to allow this appeal.

We once again reiterate that all the Teachers and the Teaching Scientists of the Agriculture Universities, who were made to superannuate as between 30.06.2010 to 12.07.2012, would be deemed to be continuing in service for all purposes and would be entitled to all remunerations that they would have otherwise received.

12 However, we may clarify that all those persons, who have not refunded the amounts already received as per paragraph 3 i and again would superannuate soon or have superannuated, the amounts received by them as terminal benefits upon superannuation, would be adjusted in the amount which is to be paid to them now. Otherwise asking them to refund the entire amount and to get the same back after one month, two months or three months would be too much of harassment to senior citizens. It is only a matter of adjustment of amounts.

13 Thus, with this modification, the appeals are all allowed. The State and the University must comply immediately realizing that they are dealing with senior citizens who had retired or are about to retire.

(Navaniti Prasad Singh, J)

(Rajendra Kumar Mishra, J)

M.E.H./-AFR

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