

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4125 of 2015

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Ram Chandra Yadav Son of Late Harihar Yadav, Resident of village
Gyangarh Math, Police Station - Ghosi , District- Jehanabad

.... Petitioner/s

Versus

1. The Vice Chancellor, Magadh University, Bodh -Gaya, Bihar.
2. The Registrar, Magadh University, Bodh-Gaya, Bihar,
3. The Principal, Jagat Narain Lal College, Khagaul, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar, Adv

For the Respondent/s : Mr. Girijesh Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 31-03-2015 Heard learned counsel for the parties as with

regard to the following reliefs-

"(i) For issuance of a writ in the nature of certiorari or any other appropriate writ for quashing of the part of Notification dated 21.02.2009 issued by the Registrar Magadh University, Bodh-Gaya pursuant to the order of the Vice Chancellor, Magadh University, Bodh Gaya, where by the petitioner has been shown as peon and accordingly his pension and gratuity has been sanctioned.

(ii) For issuance of a writ in the nature of mandamus or any other appropriate writ for commanding the respondent authorities to revise the pensionary benefits of the petitioner from the date of 01.01.2009 and to pay him the arrear of his pension after revising his pension with interest from the aforesaid date as the service of the petitioner was retained in the college as lab bearer (Class IV employee) in the scale of pay Rs. 165-204 vide M.U. letter no. 1398 dated 11.06.1981.

(iii) For issuance of a writ in the nature of mandamus or any other appropriate writ commanding the respondents to pay the all retirement benefits including the amount of G.P.F. and Gratuity etc. with interest to the petitioner in the pay scale of the post of Lab

Bearers.

(iv) For issuance of a writ in the nature of mandamus or any other appropriate writ commanding the respondents to pay the arrears of the differences of his salary after revising his pay from year 1982 to 2003 as the salary was paid to the all employees including the petitioner in adhoc payment and also to pay the arrears of the differences of his salary after revising his pay from 01.04.2007 to 31.12.2008 along with 18% penal interest over it."

It has taken the petitioner a period of more than six years in realizing that his pension fixed by the Magadh University vide order dated 24.03.2009, was incorrect only because all the calculation of his retirement benefit was made on the basis of his being shown to have retired from the post of Peon. Such claim of the petitioner is based on the ground that when the College of the petitioner was made constituent, his services were actually absorbed under Section-4 (1) (14) of the Bihar State University Act, 1976 by an order dated 11.06.1981 on the post of Lab Boy in the department of Botany and not on the post of peon in the college and the pay scale of the post of Lab Boy was higher to the post of peon.

This Court has, accordingly, perused the order



dated 11.06.1981, which at best appears to be the first order regarding allowing payment of salary to the teaching and non teaching employees of the affiliated college which was made constituent and that cannot be read as an order of absorption on the post of Lab Boy. As a matter of fact, it would be a matter of investigation as to how in department of Botany there could be as many as six Lab Boys. It thus becomes clear that some decision was taken in the year 1981 only to make payment of salary to the petitioner along with non teaching and teaching employees, who were working in the affiliated college. This order dated 11.06.1981 as contained in Annexure-1 is definitely not the order of absorption of the service of the petitioner.

In that view of the matter, while this Court would not like to interfere with the notification dated 24.03.2009, which has already been acted upon for a period of more than six years but nothing said in this order, however, will come in the way of the petitioner to



impress upon the authorities of the Magadh University that he may be getting some more amount of retirement benefit particularly monthly pension on account of his claim of post being changed from Peon to Lab Boy.

It is however made clear that fixation and payment of retirement benefit of the petitioner if any, on account of delay of more than six years, shall take effect only from prospective effect and in no view of the matter, the petitioner will be entitled for arrears of salary and post retirement benefit keeping in view the law laid down by the Apex Court in the case of ***Union of India v. Tarsem Singh*** reported in (2008) 8 SCC 648 wherein paragraph 7 and 8, Justice Raveendran had to say:

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the



settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances”.

Thus, if the petitioner represents his case for re-fixation of pensionary benefit the same shall be examined by the competent authority of the Magadh University and a decision for re-fixation of the retirement benefit only with prospective effect shall be taken within a period of three months from the date of receipt of the representation of the petitioner along with a copy of this order.

At this stage, learned counsel for the petitioner submits that there are certain dues of arrears of salary of the period of 1982 to 2003.

This Court however having regard to the law laid down by the Apex Court in the aforesaid case of Tarsem Singh (Supra) as also delay of more than twelve to thirty three years in claiming such salary would straightway reject such claim.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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