

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19502 of 2011

Dr. Brahm Deo Sah (Rtd. Principal , Magadh University, H.Q. Bodh Gaya) S/o Late Janaki Sah Resident of Vijay Nagar (Hanuman Nagar) P.S. - Patrakar Nagar, Distt.- Patna, Pin Code – 800026.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Human Resource Development Department, Govt. of Bihar, Patna.
3. Magadh University, Bodh-Gaya, through the Vice-Chancellor, P.S. - Magadh University, Bodh-Gaya, Distt.- Gaya
4. The Registrar, Magadh University, P.S. Magadh University, Bodh-Gaya, Distt.- Gaya.
5. The Finance Officer, Magadh University, P.S. - Magadh University, Bodh-Gaya, Distt.- Gaya

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Hamendra Prasad, Sr. Adv.
For the State : Mr. Ajay Bihari Sinha, Adv.
Mr. Sanjay Prakash Verma, Adv.
For the University : Mr. Bhaskar Shankar, Adv.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 04-12-2015

Heard learned counsel for the parties.

The petitioner had come for payment of his post retiral dues and other connected reliefs but the issue which now remains is whether the payment by way of incentive of two advance increments for having acquired Ph.D. degree prior to 01.01.1996 shall be payable from 27.07.1998 or 18.05.2010 as per the decision of the State Government. Learned counsel for the petitioner has submitted that though the scheme was accepted by the Government in the year 2001 but actual



monetary benefit was not given. It is submitted that even as late as 2006, the Government had been conducting an exercise to ascertain as to what would be the financial implication for implementing the aforesaid scheme. It is further submitted that finally the Government came out with a circular on 18.05.2010 by which even though the U.G.C. package was accepted and such benefit of two advance increments were granted to the petitioner and other similarly situated persons but the actual monetary benefit was sought to be given with effect from 18.05.2010. This decision has also been challenged by way of Interlocutory Application in the present proceeding. Learned counsel has also relied on various decisions of co-ordinate Benches of this Court in support of his contention that actual monetary benefit should also be granted with effect from 27.07.1998 and not 18.05.2010.

Learned counsel for the respondents have raised a preliminary objection and submitted that once the State Government had accepted the U.G.C. scheme in the year 2001 itself and the petitioner being covered by the same for being given the benefit of two advance increments never moved either before the authorities or the Court for such relief and only in the present writ application in the year 2011 such plea has been raised and further that initially there was no challenge to the circular of the State Government dated 18.05.2010 and only by way of an amendment, the same has been challenged which clearly indicates that there has been delay and laches on the part of the



petitioner. It has also been submitted that even on merit, the decision of the State Government to pay the actual monetary benefit from 18.05.2010 is sound in view of the fact that till 2006, the State was trying to ascertain its financial liability under the said scheme and thus taking into view the same it was made effective from 18.05.2010 and it is mentioned in the circular itself that a burden of Rs. 8,64,94,800/- would be put on the State exchequer and thus in that view of the matter also making the same effective from 27.07.1998 would have increased the burden of the State exchequer to a few hundred crores which clearly the State Government was not in a position to bear and thus the Court may not interfere in the matter and direct for payment from a retrospective date as the decision is also sound on facts.

It is further submitted that earlier also the petitioner had moved before the Court twice in C.W.J.C. No. 6076 of 2002 for pensionary benefits and again in C.W.J.C. No. 5293 of 2004 for the same relief which was followed by filing of a contempt application being M.J.C. No. 2020 of 2011 and thereafter payment was made but in none of the cases, the issue that the petitioner was not getting his two advance increments from 27.07.1998 was ever raised and thus the Court may not entertain such plea at this 3rd round of litigation. Learned counsel have further submitted that the decisions relied upon by learned counsel for the petitioner are different on foundational facts inasmuch as the persons moving the Court had initially been

granted the benefit which was later on withdrawn and in such circumstance, the Court had interfered and restored the benefit from the earlier date which is not the present case where the petitioner was never granted such benefit and still did not choose to approach the Court within a reasonable time.

Considering the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioner having superannuated in the year 2001 and the cause of action accruing from 10.07.2001 and he also having approached the Court twice earlier and also in a contempt application without raising this issue, it would not be proper for the Court at this belated stage to go into the issue. Moreover, the decision taken by the State Government having considered the financial implication cannot be held to be arbitrary by the Court as it involves public money.

For the reasons aforesaid, the Court is not inclined to exercise its extraordinary writ jurisdiction and accordingly the application stands disposed off.

(Ahsanuddin Amanullah, J.)

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