IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.354 of 2014

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Parikshit Sharma S/O Late Padamdeo Sharma Resident Of Mohalla Makshudanpur Kothi, Police Station Kotwali, District- Gaya

.... Petitioner/s

Versus

1. The Magadh University Through Registrar, Magadh University, Bodh Gaya.
2. The Vice Chancellor, Magadh University, Bodh Gaya.
3. The Registrar, Magadh University, Bodh Gaya.
4. The Finance Officer, Magadh University, Bodh Gaya,
5. The Principal, J.J. College, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Virendra Prasad, Adv.
For the Respondent/s : Mr. Hansraj

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT
Date: 03-02-2015

Heard learned counsel for the parties.

2. Having regard to the scope of prayer made in this writ application, reading as follows:-

> *"---- commanding the respondent University to pay the full pension, in pay bound of Rs. 37,400-67,000/- with grade pay of Rs. 10,000/- remaining amount of gratuity amount of Rs. 7,50,000/- group insurance amount with 12.5% compoundable interest, leave salary 300 days, general provident fund amount with up to date penal interest---"*

it is found from the counter affidavit and supplementary counter affidavit that the petitioner's pension has been fixed at Rs. 29,490 per month instead of his earlier pension of 26,541/- per month with effect from 1.8.2012. The pension payment order no. 3698/13 in Annexure-A has been produced by the learned counsel for the University to only establish that the petitioner's payment of retirement benefit has been sought to be made as per his entitlement. He has also referred to Annexure-B, an order dated 26.3.2014 issued by the Finance Officer asking the Principal of the College to give effect to the revised pay-scale for the purpose of payment of salary and/or retirement benefit. Yet again, by an order dated 12.12.2013 read with notification dated 10.10.2014, the University has also passed an office order for release of balance amount of the leave encashment. Similarly, the University by order dated 20.9.2013 has directed for payment of Rs. 4,48,281.65/- towards the amount of provident fund.

3. Learned counsel for the petitioner does not dispute this fact. He, however, has submitted that the petitioner's promotion on the post of Professor with effect from 30.9.1993 having been notified by the University which now also gets affirmed in view of the order dated 5.12.2014 of Justice S.N. Jha Commission, the petitioner cannot be denied payment of full retirement benefit as a Professor on the post he will be deemed to have continued from 30.9.1993 to 31.1.2010.

4. There would be no dispute that if there was certain dispute with regard to the petitioner's substantive appointment on account of his temporary appointment as a vitiated appointment, that has got resolved by an order of Justice S.N. Jha Commission dated 5.12.2014. The impact of such order has to be understood by the University but, nonetheless the University had already notified promotion of the petitioner's service in 1997 granting time bound promotion with effect from his due date i.e. 30.9.1977.

5. As with regard to the reliance placed in the order of Justice

S.N. Jha Commission, this Court only hold that such Commission was only given power of making enquiry and submit its recommendation to High Court. The Commission's order, therefore, cannot be said to be final unless it is approved by this Court and, therefore, the University will be well advised to look into the aspect of the order elaborately passed by justice S.N. Jha Commission and, thereafter, move this Court for its confirmation before the Hon'ble Inspecting Judge who had referred the matter to justice S.N. Jha Commission.

6. Reverting back to the other claims of the petitioner, this Court would find that initially the petitioner had opted for benefit of CPF and later on he deposited those amounts to claim the benefit of Provident Fund. Let it be noted that he opted for the benefit of Provident Fund by depositing the amount that he had already withdrawn on the head of Provident Fund and, therefore, once the petitioner's amount of Rs. 89,500/- which was to be deposited in the C.P.F. Account to become entitled for payment of pension cum gratuity and that once again deposited till 20.9.2013, there would be no question of payment of interest to the petitioner because he himself had sought interest over the amount of provident fund which was fixed at Rs. 4,48,281.65/- by order dated 20.9.2013 (Annexure-E). The petitioner, therefore, would only be entitled for getting payment of pension in the Professor pay-scale and revision of his retirement benefit on the basis of such fixation of amount of pension.

7. This Court hopes and believes that the exercise must be completed by the University within a period of four months from the date

of receipt of this order and all the due amount payable and admissible to the petitioner by way of retirement benefit on the basis of his working and retired as a teacher of the University will be calculated and paid after deducting the amount which has already been paid to him within a period of next two months from the date of expiry of a period of four months.

8. At this stage, learned counsel for the petitioner has pointed out that the petitioner would be entitled for payment of compound interest at the rate of 12.5% on the amount of Group Insurance. For this purpose, he has relied on a judgment of this Court in the case of ***Prof. Surendra Bahadur Singh Vs. The State of Bihar & Ors.*** reported in ***2006(4) PLJR 369***. From reading of the aforesaid judgment, it would become clear that what was under consideration before the learned Single Judge was related to examination of the scheme of Group Insurance of Baba Saheb Bhim Rao Ambedkar Bihar University. What was, therefore, said in that judgment with regard to University agreeing to pay 10% per annum by way of simple interest on the amount of Group Insurance and this Court directing payment of the 12.5% by compound interest cannot be ipso facto made applicable in the case of the Magadh University because there is no clinching evidence with regard to the applicability of the same Group Insurance Scheme. The question, therefore, which still will have to be decided by the authority of the Magadh University as to what was the scheme of Group Insurance in force in Magadh University and if it is found that the same is exactly similar to Baba .Saheb Bhim Rao Ambedkar University, the petitioner will be entitled for payment of 12.5% of interest.

9. The issue of payment of interest on any amount which was not paid on account of the laches on the part of the University shall be decided by the University in view of the decision of the State Government laying down payment by limiting 5% of interest from the date of entitlement.

10. At this stage, when learned counsel for the petitioner has relied on a judgment of the Apex Court in the case of ***D.D. Tewari (Dead) through Legal Representatives Vs. Uttar Haryana Bijli Vitran Nigam Limited & Ors.*** reported in ***2014 (8) SCC 894*** with regard to payment of retirement benefit at the rate of 9% per annum, this Court must note that the facts of those cases was entirely different.

11. As a matter of fact, in the State of Bihar and particularly with regard to claim of promotion of the teacher from retrospective date, neither the State Government nor the University can be said to be at fault so as to be saddled with the liability of payment of interest. In the case of the petitioner, he was not found entitled for promotion on account of his not fulfilling the prescribed condition from the date of his appointment. As a matter of fact, the cases were sent to Justice S.N. Jha Commission for a fact finding enquiry as with regard to nature of appointment of the petitioner and that has been decided only recently by way of recommendation of the Justice S.N. Jha. Thus, in this case, when the petitioner himself become entitled on account of a recent order of justice S.N. Jha Commission in absence of which he could never have dreamt of being promoted and that recommendation till date has not been approved by this Court, there would

be no question of payment of interest to the petitioner on account of delayed promotion and the consequential enhancement in the salary/retirement benefit.

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

(Mihir Kumar Jha, J)

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