

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 12 of 2014

IN

Civil Writ Jurisdiction Case No. 18336 of 2010

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The State of Bihar through Principal Secretary Higher Education, Bihar, Patna.

.... Appellant

Versus

1. Shyam Nandan Shahay, S/o Late Harnath Shahay, H.O.D. Psychology, J.P. College Narayanpur, P.S.-Bhawanipur (Narayanpur), District-Bhagalpur.

2. Pramod Kumar Sinha, S/o Late Trilokinath P.G., Sociology, P.S.-Bhagalpur University, District-Bhagalpur.

3. Rajib Kumar Singh, S/o Shri Sushil Kumar Singh, Lecturer in Commerce, S.M. College Bhagalpur, P.S.-Adampur, District-Bhagalpur.

4. Mukesh Kumar Singh, S/o Shri Kuldeep Narayan Singh, Lecturer in Commerce, S.M. College Bhagalpur, P.S.-Adampur, District-Bhagalpur.

..... Petitioners-Respondents

5. The Vice-Chancellor, Tilkamanjhi Bhagalpur University, Bhagalpur.

6. Tilkamanjhi Bhagalpur University, Bhagalpur through its Registrar, District-Bhagalpur.

7. The Auditor, Tilkamanjhi Bhagalpur University, Bhagalpur.

8. The Auditor, for State of Bihar posted at Tilkamanjhi Bhagalpur University, Bhagalpur.

9. The Principal, S.M. College, Bhagalpur, P.S.-Adampur, District -Bhagalpur.

10. The Principal, J.P. College, Narayanpur, P.S.-Bhawanipur (Narayanpur), District-Bhagalpur.

.... Respondents-Respondents

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Appearance :

For the Appellant : Mr. Devendra Kumar Sinha, A.A.G.-2

Mr. Abhinav Raj, Advocate

For the Respondents : Mr. Rajendra Giri, Advocate

Mr. Ashok Kumar Keshari, Advocate

Mr. Ashhar Mustafa, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

C.A.V. JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

Date: 15-09-2015

The State of Bihar through its Principal Secretary, High Education Department, has preferred the present appeal under Clause-10 of the Letter Patent of this High Court, aggrieved by an order, dated 07/05/2013, passed, in CWJC No. 18336 of 2010, by the learned single Judge on a writ petition, filed under Article 226 of the Constitution of India, by the private respondents herein, who are teaching employees in Post Graduate Department/constituent College under Tilka Manjhi Bhagalpur University, Bhagalpur, whereby the State of Bihar has been directed to release necessary fund for payment of their dues/arrears of difference of salary, which accrued to them consequent upon introduction of revision of scale by the University Grant Commission (*hereinafter referred to as the U.G.C.*) and accepted by the State government.

2. The learned single Judge, by the order under appeal, has directed the respondents to pay the arrears to the teachers of the Universities with interest @ 12% per annum to be calculated from the date the amount became due till final payment is made or

has been made.

3. Dealing with the arrears of the teaching employees of the Colleges, which became constituent units of various Universities, the learned single Judge has passed the following order:-

“However, so far as the colleges of 4th phase, if any, are concerned, a Division Bench of this Court in its decision dated 13.07.2012 in L.P.A. No. 32 of 2011 has held that till the appointments of such teachers were confirmed after recommendation of the Justice Aggarwal Commission and its acceptance by the Apex Court, the situation was fluid, thus, such teachers could not have claimed their revised salary. However, the moment the State Government also accepted that recommendation and thereafter the services of the teachers were confirmed, the University was duty bound to pay the dues and the State Government was obliged to release the required fund. Thus, in such cases the respondents would be obliged to pay the arrears immediately and also pay simple interest at the rate of 12% per annum which should be calculated from the date of confirmation/absorption of services of such teachers till the date of its payment.”

4. We have heard Mr. Devendra Kumar Sinha, learned Additional Advocate General-2, appearing on behalf of the

appellant, Mr. Rajendra Giri, learned counsel, appearing on behalf of the Tilaka Manjhi Bhagalpur University, Bhagalpur, and Mr. Ashhar Mustafa, learned counsel appearing for the private respondents as well.

5. From the pleadings on record and the grounds taken in the petition for appeal, we find that no dispute has been raised as regards the claim of the private respondents, who were the writ-petitioners, that they are entitled to the difference of arrears arising out of introduction of U.G.C. package/pay-scales. The objection, which is being taken on behalf of the appellant, State of Bihar, is that as per the U.G.C. package, the Central government was required to provide 80% of the financial assistance to the State of Bihar, but till date the Central government has not provided the requisite amount towards payment of arrears for the period from 01/01/1986 to 31/03/1990 and from 01/01/1996 to 31/03/2000 despite repeated requests made for release of the said amount by the State government. In this regard, paragraph Nos. 4 and 5 of the *memorandum* of appeal, being relevant, are reproduced below:

“4. That it may be relevant to state here that so far as UGC arrear is concerned as per UGC package the Central Government was required to provide 80% of financial assistance but unfortunately till date the Central Government has not provided the entire amount towards payment of arrears from 01.01.1986



to 31.03.1990 and 01.01.1996 to 31.03.2000 and the State Government has raised repeated demand to the Central Government for release of Rs. 1.79 cores (approx.) and odd in the light of the order passed in CWJC No. 11986 of 2001 and LPA No. 500 of 2002, vide letters dated 17.08.2009, 22.02.2010, 27.03.2010 and 21.01.2011 but till date the State government has not received the said amount. The State Government has also not received the U.G.C. grants for the period from 01.01.2006 to 31.03.2010.

The true photo copies of the letters dated 17.08.2009, 22.02.2010, 27.03.2010 and 21.01.2011 are annexed herewith and marked as Annexure-1, 1/A, 1/B and 1/C respectively to this memo of appeal.

5. That in this connection it is further stated t hat vide letter no. 2300 dated 09.11.2012 the Government of Bihar, Education department requested the Director, Ministry of Human Resource Development Department, Government of India to take necessary steps for sanction and release of Rs. 7,04,33,03,131/- for payment on account of revision of pay scale for the period from 01.01.2006 to 31.03.2010, but the same has not been provided by the Government of India as Yet."

6. Mr. Devendra Kumar Sinha, learned Additional Advocate General-2, appearing on behalf of the appellant, has argued that 80% of the contribution, required to be made by the Central government, to meet the financial liability for introduction



of revised U.G.C. pay-scales having, admittedly, not been received by the State government, learned single Judge ought not to have directed the State authorities to release necessary fund. It is the submission of Mr. Sinha, learned A.A.G.-2, that the liability of the State government to release fund for clearing arrears of teaching employees of the University for payment of arrears of salary arising out of implementation of U.G.C. package/pay-scales would not arise until the Central government releases its contribution, to the extent of 80% of the financial liability, to the State government. He has submitted, with reference to Annexure 4 to the *memorandum* of present appeal, that despite the fact that the State government did not receive 80% of contribution from the Central government for the period from 01/01/1996 to 31/03/2000 and from 01/01/2006 to 31/03/2010, it has released additional grant of Rs. 543,37,75,990/- to the Universities for the financial year 2012-2013 vide Memo No. 848, dated 24/04/2014, towards payment of arrears of pensions, current post retiral benefits and arrears of salary, 20% contribution of the State government for the period from 01/01/2006 to 31/03/2010 and for payment towards difference of U.G.C. pay-scales, with effect from 01/01/1996 to 31/03/2000. He has further submitted that non-payment of arrears, arising out of introduction of U.G.C. pay-scales to the employees of the Universities, was not

intentional nor deliberate, but it was because of non-availability of funds to the tune of 80%, which was required to be made available by the Central government.

7. Learned counsel, appearing on behalf of the respondents, University, has not disputed the claim of the private respondents and has contended that because of non-availability of fund with the University, the arrears, arising out of the introduction of U.G.C. pay-scales, could not be paid to the teaching employees of the University.

8. Pursuant to the leave granted by this Court in the present proceeding, the appellant, State of Bihar, has filed a supplementary affidavit, on 01/08/2014, bringing on record a letter, dated 14/08/2012, issued by the Department of Higher Education, Ministry of Human Resource Development, Govt. of India, with reference to earlier letters, dated 31/12/2008 and 11/05/2010, of the Ministry of Human Resource Development, Govt. of India, in order to substantiate the appellant's plea that in terms of the scheme of introduction of U.G.C. package/pay-scales, in question, it was obligatory on the part of the Central government to provide 80% of the financial assistance. We may point out that the letter, 14/08/2012, aforementioned was addressed to all State Education Secretaries and In-charge of the Higher Education, regarding



reimbursement of arrears under the scheme of revision of pay of the teachers in Universities and Colleges, following revision of pay-scales of the Central government employees on recommendation of the 6th Central Pay Commission. In the light of stand of the appellant-State of Bihar, as noted above, the contents of the said letter, in our considered view, being relevant, are extracted hereinbelow:-

“..... 2. *Although this Scheme was essentially for teachers in Central Universities, provisions of the Scheme could be made applicable by State Governments to State Universities and Colleges coming under the purview of the State Government, provided the State Governments adopt and implement the scheme as a composite scheme, including the enhanced age of superannuation and the regulations laid down by the UGC in this regard. The age of superannuation for teachers in Central Universities had been enhanced to 65 years vide this Ministry's letter No. 1-19/2006-U.II dated 23.03.2007, for those involved in class room teaching.*

3. *Central Government had decided to provide financial assistance, for the period 1.1.2006 to 31.3.2010, to the extent of 80% as reimbursement to those State Governments, which may opt for these revised pay scales. The State Governments were to provide 20% of the arrears from its own resources. The assistance was subject to the condition that the entire pay revision package, together with all*



conditions laid down in this regard by the UGC by way of regulations and including enhancing the age of superannuation of teachers, would be implemented as a composite scheme by the State Governments without any modification except to the date of implementation (on or after 1.1.2006) and any higher scales of pay which the State Government may decide after taking into consideration local conditions into consideration. However, the Central Government under the Scheme.

4. After taking into consideration the views expressed by several State Education Ministers during the Conference held in 2010 the Central Government has now decided to de-link the condition of enhancement of age of superannuation from the payment of Central share of 80% arrears to the States.

5. Bearing in mind that the question of enhancement of age of retirement is exclusively within the domain of the policy making power of the State Governments, the issue of age of retirement has been left to the State Governments to decide at their level. The condition of enhancement of age of superannuation to 65 years as mention in this Ministry's letter dated 31.12.2008 may be treated as withdrawn, for the purpose of seeking reimbursement of central share of arrears to be paid to State University and College teachers. However, the other conditions as mentioned in the letters cited above shall continue to apply.

6. State Governments may please note that

reimbursement of 80% of central share of the additionality of payment arrears, for the period from 1.1.2006 to 31.3.2010, will be made by the Central Government in 2-3 installments. However, this would be by way of reimbursement only, after the State Government has made the payment. In this connection, this Ministry letter of even No. dated 11.05.2010 also refers (copy enclosed).”

(emphasis added)

9. The plea of appellant, State of Bihar, that having not received 80% of the share of the Central government, the State government was not obliged to release total fund to meet the expenditure, arising out of introduction of U.G.C. package/pay-scales, stands answered by paragraph 6 of the said letter, dated 14/08/2012, brought on record by the appellant, State of Bihar, itself, wherein it is indubitably mentioned that the Central government will pay 80% of its share of the additionality of payment of arrears by way of reimbursement only, in 2-3 installments, after the State government has made the payment. The stand of the appellant, State of Bihar, that it could have released fund only after receiving 80% of central share falls off in view of the said communication, dated 14/08/2012.

10. From the pleading on record and the order under appeal, dated 07/05/2013, we find that the private respondents had



approached this Court for payment of arrears of salary including arrears of difference of salary, accrued from time to time, as per revision of Central government by the U.G.C., which, according to them, had been calculated and pre-audited by a team of the State authorities. The dispute before the learned single Judge was only with respect to non-availability of fund and not with respect to the entitlement of the private respondents, who are teaching employees in the Post Graduate Department of the University/S.M. College, Bhagalpur, a constituent unit of the Tilka Manjhi Bhagalpur University.

11. Thus, the sole dispute before the learned single Judge was, as regards availability of funds. The University had taken a plea that because of non-release of appropriate fund by the State government in this regard, the said amount could not be paid; whereas the appellant, State of Bihar, took a plea before the writ-Court that because it had not received 80% of share from the Central government, as per the terms of U.G.C. package/introduction of pay-scales, they were not in a position to release the necessary fund to the University.

12. As has been noted above, the 80% of Central share could have been made available to the State government by way of reimbursement, i.e., only after the State government had made

payments.

13. We are clearly of the view, therefore, that the learned single Judge has rightly held, in the order under appeal, dated 07/05/2013, that the State government was under statutory obligation to release necessary fund for payment of salary to the teachers of the University and its Colleges. As has been noticed above, the State government can claim reimbursement of 80% of Central share only after releasing the necessary fund to the University for payment to the teachers.

14. We do not find any infirmity, factual or legal, in the order, under appeal, requiring interference by this Court. This appeal is, therefore, dismissed.

15. There shall be, however, no order as to costs.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, ACJ.: I agree

(I. A. Ansari, ACJ.)

Praveen-II/- A.F.R.

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