

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.131 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 8089 of 2013**

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Dr. Surjit Singh, Son of Late Harnam Singh, Resident of muhalla Abulas Lane
Machhuatoli Patna-4, Police Station Kadamkuan, District Patna

.... Appellant/s

Versus

1. The State of Bihar through Commissioner Human Resources Department, Vikash
Bhawan Patna-15
2. The Vice-Chancellor, Magadh University, Bodh Gaya (Gaya)
3. The Registrar, Magadh University, Bodh Gaya (Gaya)
4. Prof. Incharge, Sri Guru Gobind Singh College, Patna city-8 Police Station
Chowk, District Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Gopal Jee, Advocate.

For the Respondent/s : Mr. Vipin Kumar, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 03-08-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 13th December, 2013 whereby the claim of the appellant for pension can be examined by Mr. Justice S.B.Sinha (Retired), who was appointed by the Supreme Court to examine the rights of teaching faculty of the constituent colleges.

The appellant, initially, filed a writ petition before this Court, bearing CWJC No. 6019 of 1991, claiming that he was employed in the Department of Political Science by the Governing



Body of the College in its meeting held on 27.04.1980. Such college was declared a constituent college of Magadh University on 12.06.1986. The grievance of the appellant was that he has not been paid his salary nor was allowed to take classes in the college. Considering the contention raised, the writ application was allowed when the following order was passed on 01.11.1995:

“For that reasons stated above, I allow the petitioners and direct the respondents to take final decision in the light of the finding of the enquiry committee appointed by the Chancellor which found that the petitioner was working as a permanent teacher in the Political Science Department of the College prior to taking over the College as constituent unit of the university. The final decision should be taken expeditiously preferably within a period of two months from the date of receipt of a copy of this order. In the meantime, the petitioner shall be allowed to join as teacher in the Department of Political Science in the College within a period of one month and shall be paid his salary in terms of the order dated 19.11.1979. I make no order as to costs.”

The Letters Patent Appeal, bearing L.P.A.No. 1744 of 1995, preferred by the University against the said order dated 01.11.1995, was dismissed when an application for condonation of delay was not accepted. It is thereafter, an order for regularization of services was passed by the Vice Chancellor of the University on 21.07.1996. The said order reads as under:

MAGADH UNIVERSITY BODH GAYA

NOTIFICATION

In terms of the directions of the Hon'ble High Court in C.W.J.C.No. 6019/91 and 9952/92, Contempt application bearing M.J.C.No. 4/96 and the revised order of the State Government bearing Memo no. 1251 dt. 12.7.96, the services of Dr. Surjeet Singh, Lecturer, S.G.G.S. College, Patna City are regularized in anticipation of the approval of the Chancellor/State Govt.

This shall not be treated as a precedence, as directed by the State Govt.

By order of the Vice Chancellor

Sd/-D.Prasad
21.7.96
Registrar,
Magadh University, Bodh Gaya

The appellant also filed another writ petition, bearing CWJC No. 584 of 1997, for a direction to the respondents to fix his salary and to consider the case of promotion to higher grade. Even such petition was allowed on 30.08.1997, when the following order was passed:

“So far as promotion of petitioner to the higher posts are concerned, the respondents will look into the matter. If any person appointed as Lecturer after the appointment of the petitioner in the similar manner, have already been granted promotion to higher post, the case of the petitioner is to be considered for such promotion to the higher post from the date such juniors have been promoted. If the petitioner is entitled for time bound promotion in terms with the statute, then they will also consider the same in accordance with law. A decision in this respect is to be taken and a reasoned order is to be passed be communicated to the petitioner within a period

of six months from the date of receipt/production of a copy of this judgment. It will be open to the petitioner to file a representation before the Vice Chancellor of the University bringing to his notice the names of persons, if any, who were similarly appointed and juniors to the petitioner have already been promoted, as well as the rule/statute relating to time bound promotion, if any, on basis of which the petitioner claims such promotion.

9. The writ petition is allowed, with the aforementioned observation/directions. There will be no order as to the costs.”

The appellant attained the age of superannuation on 31.12.2002, but was not paid the retirement benefits which led him to file another writ petition, bearing CWJC No. 14012 of 2008, which was disposed of along with analogous cases on 19.03.2010, with a direction to the appellant to submit representation before the Registrar of the University. It is in terms of such representation, the University passed the following orders, which is impugned in the writ petition:

MAGADH UNIVERSITY

Bodh -Gaya-824234

ORDER

In pursuance of order passed by the Hon’ble High Court on 19.03.2010 in CWJC No. 14012/2008 the petitioner Dr. Surjit Singh submitted his representation.

In compliance with the order passed by the Hon’ble High Court the concerned file placed before me. From perusal of records it reveals that the petitioner

belongs to IVth phase constituent colleges and absorption of teaching and non-teaching employees of IVth phase constituent college has been made, as per the direction of Hon'ble Supreme Court in passed in CA No. 6098/97 and on the recommendation of Justice Agrawal Commission duly approved by the Hon'ble Supreme Court through Magadh University notification in the year of 2009. The petitioner did not get place in Agrawal Commission and hence he could not be absorbed on the service. Thus, the claim of the petitioner is not admissible.

Keeping in view of the facts and circumstances mentioned above the representation of the petitioner stands disposed of.

Let a copy be made available to the petitioner.

Sd/- 11.10.12
Registrar
Magadh University
Bodh-Gaya

It is thereafter, the appellant filed another writ petition, bearing CWJC No. 8089 of 2013 to challenge the said decision. The learned Single Judge found that it is not a case of non-grant of pension, but it is a case of rejection of pension of the petitioner vide order Annexure-14 and dismissed the writ petition on 13.12.2013. Therefore, the present Letters Patent Appeal.

Learned counsel for the appellant argued that Mr. Justice S.C.Agrawal Commission was appointed by the Hon'ble Supreme Court vide order since reported as State of Bihar & Ors. v. Bihar Rajya M.S.E.S.K.K. Mahasangh and Ors., (2005) 9 SCC 129 to

examine the case of absorption of the teaching employees, who were not absorbed so far. Since the appellant stood absorbed earlier in the year 1996, therefore, the case of the appellant for absorption was not before Mr. Justice S.C.Agrawal Commission. Therefore, the appellant cannot be denied the benefit of pension and arrears of pension for the reason that the appellant has not been recommended by Mr. Justice S.C.Agrawal Commission. The terms of reference, as are reproduced in the judgment of the Supreme Court in the case of Bihar Rajya M.S.E.S.K.K. Mahasangh (supra), reads as under:

“Terms of reference

16(1). How many sanctioned posts of teachers and non-teaching employees were there in the 40 colleges which were converted into constituent colleges pursuant to the sanction letter dated 19.08.1986 of the State of Bihar.

2. How many [proposals with regard to creation of posts for teachers and non-teaching employees had been submitted to the Education Department of the *State of Bihar or universities before 30.04.1986, the cu-off date mentioned in Appendix ‘Kha’ (P.208 of SLP)* with respect to 36 colleges converted into constituent colleges as per government letter dated 19.08.1986? (List of colleges is at pp. 206-07 of SLP and other dates mentioned in government communications in respect of four other colleges.).

3. How many teachers and non-teaching employees seeking absorption in the constituent colleges were not appointed though selections made by the College Service Commission/University Service Commission and whether they possess the basic qualifications prescribed

by the Act and statutes? This exercise will be without prejudice to the contention of the respondents that Section 57-A is not applicable to such selection, as has been held by the High Court in the judgment.

4. How many teachers and non-teaching employees would be entitled to absorption on the basis of the government letter dated 19.08.1986 and Appendix 'Kha' and the agreement entered into between the university concerned and the constituent college under Section 4(1)(14) of the Bihar State Universities Act, 1976 and other orders of the government?

The terms of reference to Mr. Justice S.C.Agrawal Commission in respect of absorption is of teaching and non-teaching employees in the constituent colleges after finding out the sanctioned posts, the proposal which was pending and how many teachers and non-teaching employees seeking absorption were not appointed through selection made by the College Service Commission/University Service Commission. Since the appellant stood absorbed by the orders of the Vice Chancellor even before the matter was referred to Mr. Justice S.C. Agrawal Commission, therefore, the case of the appellant could not have been referred for consideration of his absorption again. Such was not the import of the terms of reference either expressly or impliedly.

Consequently, we find that the order of the learned Single Bench cannot be sustained. The same is set aside. Even the order

(Annexure-14) dated 11.10.2012 is also set aside. Consequently, the respondents are directed to grant pension and arrears of pension to the appellant as a member of the teaching faculty in accordance with law expeditiously preferably within three months from today.

The Letters Patent Appeal stands allowed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	09.08.2016
Transmission Date	