

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1460 of 2016

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Nawal Kishore Sharma, son of Late Ram Sharan Sharma resident of Professor Colony, Hajipur, retired as Reader in the subject of Physics B.M.D. College, Deyalpur, Vaishali, under B.R.A. Bihar University Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Department, Govt. of Bihar, Patna
3. The Vice Chancellor, B.R.A. Bihar University, Muzaffarpur.
4. The Registrar, B.R.A. Bihar University, Muzaffarpur.
5. The Finance Officer, B.R.A. Bihar University, Muzaffarpur.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 1905 of 2016

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Bishnu Nandan Gupta, son of late Chandi Prasad, resident of Mahanjan Toli Ward No.14 Hajipur, P.S.-Hajipur, District-Vaishali retired as Reader, Head of Department of Economics, Jamunilal College, Hajipur, Vaishali under B.R.A. Bihar University, Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Department, Govt. of Bihar, Patna
3. The Vice Chancellor, B.R.A. Bihar University, Muzaffarpur.
4. The Registrar, B.R.A. Bihar University, Muzaffarpur.
5. The Finance Officer, B.R.A. Bihar University, Muzaffarpur

.... Respondent/s

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Appearance :

(In CWJC No.1460 of 2016)

For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate

For the Respondent-State: Mr. Arun Kumar Sinha, AC to GP-24

For the BRA Bihar University: Mr. Santosh Kumar Jha, Advocate

(In CWJC No.1905 of 2016)



For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate

For the Respondent-State: Mr. Madhaw Prasad Yadav, GP-23

Mr. Sanjay Kumar, AC to GP-23

For B.R.A. Bihar University: Mr. Santosh Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-02-2017

These two writ applications have been filed by the petitioners, who retired from active service on 30.06.2009 and 30.09.2008 respectively after attaining the age of superannuation as Reader for directing the respondents to pay them Full Pension after re-fixation of their basic pension.

2. The facts of these cases are not in dispute. The petitioner Nawal Kishore Sharma (C.W.J.C. No. 1460 of 2016) was appointed as a Lecturer in the Department of Physics on 01.05.1979 whereafter he submitted his joining on 8th May, 1979 in B.M.D. College, Deyalpur, Vaishali. Initially, the Bihar University Service Commission granted temporary concurrence for his continuation in service and, thereafter, vide Memo No. 13/797 dated 22.04.1992, his service was regularized with effect from the date of joining. After completion of ten years of service, he was promoted as Reader under Time Bound Promotion statute with effect from 08.05.1989 vide Memo No. 1399 dated 16.06.1992 and the Bihar State University (Constituent Colleges) Service Commission



granted concurrence of his promotion as Reader.

3. The petitioner Bishnu Nandan Gupta (C.W.J.C. No. 1905 of 2016) was appointed as a Lecturer in the Department of Economics on 10th January, 1971 in Jamunilal College, Hajipur, Vaishali. The post was sanctioned by the State Government on 29th July, 1978. Initially, the Bihar University Service Commission granted temporary concurrence for his continuation in service and, thereafter, vide Memo No. B/2678 dated 30.07.1991, his service was regularized with effect from 29.07.1978.

4. After completion of ten years of service, he was promoted as Reader under Time Bound Promotion statute with effect from 29.07.1988 vide Memo No. B/599 dated 23.02.1996 and the Bihar State University (Constituent Colleges) Service Commission also granted concurrence to his promotion as Reader.

5. It is stated by the learned counsel for the petitioners that after retirement, all the relevant papers were sent to the Registrar of the University by the petitioners for the purpose of fixation of pension and, after due verification, their pension has been fixed and they are being paid their regular pension.

6. It is contended that in case of the petitioner Nawal Kishore Sharma, the respondent-University has counted the period from 08.05.1979 to 30.06.2009, as qualifying period of service for entitlement to receive pension. Similarly, in case of the petitioner



Bishnu Nandan Gupta, the respondent-University has counted the period from 29.07.1978 to 30.09.2008, as qualifying period of service for entitlement to receive pension. As the total period of qualifying services for receiving pension in case of the petitioners were less than 30 years, they have been allowed Pro-rata pension on the basis of number of years of service completed by them.

7. It is submitted by the learned counsel for the petitioners that both the petitioners have put in more than 20 years of qualifying service and, hence, they are entitled to receive full pension in the light of the judgment and order of this Court in the matter of ***Ram Raksha Ray and Others vs. The State of Bihar and Others*** and its analogous cases passed in ***CWJC No. 176 of 2013***. It is submitted that pursuant to the order passed by this Court in the matter of ***Ram Raksha Ray & Others (supra)***, the State of Bihar filed an appeal before the Division Bench vide LPA No. 1348 of 2014, but the prayer for grant of stay of the order dated 15th May, 2015 has been rejected by the Bench. He submitted that subsequently the State Government itself has issued a Notification on 15th January, 2016 whereby the Government employees have been made entitled to get Full Pension on completion of 20 years of qualifying service. He contended that the relevant clause of the government Notification whereby the person who retired during the period 01.01.2006 and 23.09.2009 has been modified by the



subsequent Notification of the State whereby Full Pension has been allowed to all the employees, who retired on or after 01.04.2007 upto 23.09.2009 and have completed 20 years of service.

8. On the other hand, Mr. Santosh Kumar Jha, learned counsel appearing on behalf of the B.R.A. Bihar University submitted that the Notification of the State Government whereby Full Pension has been allowed to all the employees, who retired on or after 01.04.2007 upto 23.09.2009 and have completed 20 years of service has not been adopted by the University till date. He submitted that in this regard, a decision has to be taken by the University and, only thereafter, the petitioners can claim their right to receive Full Pension.

9. Learned counsel for the State submitted that in view of the decision of the State Government, pension, family pension and gratuity have been revised in respect of the retired employees of the Universities and constituent colleges. However, since the petitioners have retired on 30.06.2009 and 30.09.2008 respectively, their pension has been fixed in view of the Government decision and the Resolution of the University in this regard. He contended that the order passed by the learned Single Judge in the matter of ***Ram Raksha Ray and others*** (*supra*) has already been challenged in LPA No. 1348 of 2014 and the matter is still sub-judice.



10. I have heard learned counsel for the parties and perused the record.

11. It would be of salience to note here that after implementation of the Sixth Pay Revision Commission recommendations, the number of years of service required for eligibility of Full Pension was reduced from 33 years to that of 20 years in case of the employees of the Central Government.

12. As Sixth Pay Commission recommendations were implemented with effect from 01.01.2006, the reduction in number of years of service for Full Pension was made applicable to Central Government employees, who retired on or after 1st January, 2006.

13. It would further be apposite to state here that State Government vide its Resolution No. 11070 dated 30.12.2008 constituted a Pay Committee for recommending *inter alia* a revised pay structure for the State Government employees in the light of recommendations made by the Central Pay Commission for the revised pay structure for employees under the Central Government. On 21st December, 2009, the Committee submitted its Report relating to pay scales and other benefits to the State Government employees.

14. The State Government, after considering the recommendations of the Pay Committee along with the



recommendations of three members committee constituted vide Resolution No. 12203 dated 23.12.2009 to scrutinize the recommendations of the Pay Committee, in respect of State Government employees, decided to accept the running Pay Bands and Grade Pay based on new revised pay structure, vide Resolution No. 3A-2-P.R.-16/9-630. By the aforesaid Resolution, though the revised pay structure came into effect notionally from 1st January, 2006, the actual payments in the revised pay structure was given with effect from 1st April, 2007.

15. It is well known that the calculation of amount of pension is based on total qualifying service and average emoluments drawn during last ten months by an employee working either under the Central Government or under the State Government.

16. Earlier, State Government employees were entitled to receive 50% of average emoluments, as Full Pension, on rendering not less than 33 years of qualifying service and if the qualifying service was less than 33 years, pension was to be calculated proportionately vide Rule 43 of the Bihar Pension Rules, 1953.

17. Pursuant to the recommendations of the Sixth Pay Commission on retirement benefits, the Government of Bihar also resolved to reduce the minimum qualifying service for Full



Pension from 33 years to that of 20 years vide Resolution No. 137 of 2008, 819 dated 23.09.2009.

18. In the aforesaid Resolution in Para 2(ii)(A)(b), it has been resolved to dispense with 33 years of qualifying service for full pension. It has been further resolved that the Government employee, who has completed minimum pensionable service of 20 years on 01.01.2006 or thereafter, and has retired would be entitled to receive pension at 50% of the average emoluments received during the past ten months from the pay last drawn, whichever is more beneficial to the retiring employees. However, in Para 2(ii)(B)(a) of the said Resolution, it is stated that the government servant, who retired between 01.01.2006 and 23.09.2009 rendering less than 33 years of pensionable service would be entitled to receive pension on Pro-rata basis.

19. In other words, the recommendation reducing the qualifying service for Full Pension was made effective only prospectively and the State Government employees, who retired in between 01.01.2006 and 22.09.2009, were deprived from the benefits of Full Pension after completing 20 years of pensionable service.

20. Being aggrieved by the aforesaid Resolutions, the Government employees retired in between 01.01.2006 and 22.09.2009 preferred *C.W.J.C. No. 176 of 2013 (Ram Raksha Ray*



and Others v. State of Bihar and Other) and analogous cases mainly challenging the decision whereby the benefits of Full Pension after completing 20 years of pensionable service was denied to those, who had retired between 01.01.2006 and 22.09.2009.

21. The learned Single Judge, who heard the case of *Ram Raksha Ray and Others (supra)* and analogous cases framed the issue as to whether the benefit of 20 years of service for Full Pension would be limited to those employees who retired after the date of Notification or for such employees who retired between 01.01.2006 and 23.09.2009 when the Notification was issued.

22. After discussing the matter at length, the Bench vide its order dated 15.05.2015 held as under:-

“... the Court comes to a considered opinion that the benefit of only 20 years of service for pension would be extended to all such persons who has superannuated on or after 01.04.2007 instead of 23.09.2009, the date of notification. The relevant clause of Resolution No. 137/08 is hereby struck down and the writ applications are allowed in terms of the above”.

23. The aforesaid order dated 15.05.2014 has been challenged before a Division Bench in L.P.A. No. 1348 of 2014 by the State of Bihar, but the prayer for stay of the order dated



15.05.2014 passed in those writ applications has been dismissed by the Division Bench vide its order dated 08.01.2015.

24. Subsequently, the State Government itself has issued an amended Resolution vide Memo No. 50 dated 15.01.2016 whereby Full Pension has been allowed to all the employees, who retired on or after 01.04.2007 to 23.09.2009 and have completed 20 years of service. The amended Resolution was passed keeping in mind the order dated 15.05.2014 passed in the matter of **Ram Raksha Ray and Others** (*supra*) and its analogous cases.

25. Thus, it would be evident that though the order passed in Ram Raksha Ray and others and analogous cases has been challenged in L.P.A. No. 1348 of 2014, the State Government itself has accepted the decision of the Court.

26. Now, the issue before this Court is that whether or not the amended Resolution of the State would also be applicable in case of the retired teachers of the B.R.A. Bihar University.

27. In this regard, it would be relevant to note that the payment of post-retirement benefits of retired University employees in the State of Bihar is governed under the various provisions of the Statute, which has been framed under Section 34 of the Bihar State Universities Act, 1976. The Statute governing the payment of post-retirement proceeds of the retired Universities employees in the State of Bihar is known as Statutes for the grant of



retirement benefits to employees of the Bihar/Ranchi/Bhagalpur/Magadh/L.N. Mithila University/K.D.S. Sanskrit University, which was initially approved by the Hon'ble Chancellor on 18.11.1980 and the same stood amended from time to time firstly, on 25.11.1982 and, thereafter, in the year 2005.

28. Article 16 of Section II in Appendix-A of the said pension Statute would make it clear that the retired university employees are fully entitled for being paid pension on the same rate, on which rate the retired State Government employees are being paid pension by the State Government.

29. The aforesaid Article 16 of the Statute reads as under:-

“16. An employee eligible for pension under any of the categories mentioned above, shall be granted pension according to the scales given in scheduled ‘A’ (i) if he ceased to be in University service between 1-4-72 and 31-12-72 and schedule A (ii) if he ceased to be in University service between 1-1-73 and 30-3-79. For those who ceased to be in University service from 31-3-79 onwards, the scales given in Schedule A (iii) will be applicable. Any further change in the rate of pension as also relief in pension under the Bihar (Govt.) Pension Rules, will be equally applicable to the University employees.”

(emphasis mine)



30. The few other provisions of the said pension Statue like, Article 23.3, Article 27 and Article 30 of Section II in Appendix-A and Article 7 of Appendix-B of the Statute would also make it evident that the retired Universities employees are fully entitled for being paid pension and dearness relief thereon on the date on which the retired government employees are being paid pension and dearness leave by the State Government. The aforesaid provisions reads as under:-

*“23.3. The rates and the amounts of gratuity provided for in this section **shall be changed to the rates applicable to the employees of the State Government whenever there is any change in these latter rates.***

*27. The rates and maximum amounts of family pension as provided for in this Section **shall be changed to the rates applicable to Govt. employees whenever the latter rates undergo any change.***

*30. In all matters, not specifically dealt within these Rules (both Appendix ‘A’ and ‘B’) the rules and orders applicable to the employees of Government of Bihar, **will apply mutatis mutandis to the employees of this University.***

*7. The rates and amounts of Gratuity as provided for in this Section **shall be changed to the rates applicable to employees of the State***



Government whenever there is any change in these latter rates.”

(emphasis mine)

31. In view of the said provisions, as provided in the pension Statute, there is no iota of doubt that the retired University employees in the State of Bihar including the petitioners of these two cases are fully entitled to be extended the same benefits as is extended from time to time to the retired State Government employees.

32. In this regard, it would be of salience to note here that in ***Prof. (Dr.) Ram Dinesh Sharma v. T.M. Bhagalpur University & Others [2008(4) BBCJ 582]***, a Division Bench of this Court had occasion to examine the implication of the above-said Statute 16 of the Statutes. Upon examination, the Division Bench held in paragraph no.8 as under:-

“8. Statute-16 of the Statutes inter alia provides that any further change in the rate of pension as also relief in the pension under the Bihar Government Pension Rules will be equally applicable to the University employees. This means and without any doubt that the change with regard to rate or relief of pension to the State Government pensioners automatically applies to the University pensioners in the State of Bihar. In other words, the decision taken by the State Government on 11th April, 2005 for



merger of 50% Dearness Relief in the basic pension of the State Government pensioners with effect from 1st January, 2005 becomes applicable to the University pensioners as well and no separate order by the State Government generally or specifically for that purpose is required.”

33. In paragraph no.11, the Bench further held as under:-

“11. A conjoint reading of Statute-16 of the Statutes and the Government Circular dated 11th April, 2005 leads to irresistible conclusion that the retired University employees with effect from 1st of January, 2005 are entitled to merger of 50% Dearness Relief in their basic pension.”

34. In view of the decisions laid down by this Court in **(Dr.) Ram Dinesh Sharma (supra), Ram Raksha Ray & Others (supra)** and in view of the discussions made, hereinabove, I am of the considered opinion that the petitioners, who have indisputably completed more than 20 years of pensionable service and have retired on 30.06.2009 and 30.09.2008 respectively, are entitled to receive full pension like the State Government employees, as the State Government itself has issued Memo No. 50 dated 15th January, 2016 whereby the Government employees have been made entitled to get Full Pension on completion of 20 years of



qualifying service on or after 01.04.2007 upto 23.09.2009.

35. Accordingly, I direct the respondents to re-fix and pay Full Pension to the petitioners. The entire exercise in this regard must be completed by the respondents within four months from the date of receipt/production of a copy of this order.

36. With the aforesaid observation and direction, these writ applications are disposed of.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.02.2017
Transmission Date	NA

