

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15786 of 2015

Along with

Interlocutory Application No. 4833 of 2016

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Gopal Saran Singh Son of Late Kishundeo Prasad Singh, R/o Mohalla- Kazipur
Road No. 3, Patna- 4, Post- Bankipur, P.S.- Kadam Kuan, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary/Commissioner, Department of Education, Government of Bihar, Patna
2. The Secretary, Finance Department, Government of Bihar, Patna
3. The Vice Chancellor, Patna University, Ashok Raj Path, Patna
4. The Registrar, Patna University, Ashok Raj Path, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Bose, Sr. Advocate with Mr. Kalyan Shankar, Advocate
For the State	:	Mr. Ravindra Kumar, AC to AAG 10
For the P.U.	:	Mr. Digvijay Singh with Mr. B. J. Jha, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 07-11-2017

Heard learned counsel for the petitioner, State and Patna University.

2. At the very outset, the Court may record that it has got no assistance from learned State Counsel.

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3. The present Interlocutory Application has been filed by the petitioner seeking amendment in the writ petition by claiming a further relief for quashing of order dated 04.04.2015 passed by the Vice Chancellor of Patna University by which prayer of the petitioner for grant of pension based on the last pay drawn by him has been rejected.



4. On considering the matter, the prayer is allowed. Challenge to the order of the Vice Chancellor dated 04.04.2015 shall form part of the relief claimed for in the main writ petition.

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5. The petitioner had moved initially the Court seeking the following reliefs:

“i. For issuance of writ in the nature of mandamus commanding the respondent officials of the University to calculate the entire revision of pension on the basis of last pay drawn i.e., Rs. 3700/- and thereafter revise the same as time to time allowed by the Patna University.

ii. For issuance of writ directing the respondents to pay the amount of revised gratuity on the basis of last pay drawn.

iii. For issuance of writ directing the respondent University to pay Earn leave salary of 240 days calculated on the basis of last pay Rs. 3700/- minus the leave salary already paid according to office order 2023-27 dated 5th Feb. 1991.

iv. For issuance of writ directing the respondents to make payment of the statutory interest accrued as decided by the Hon'ble Court.

v. For any other relief/reliefs for which the petitioner is entitled for.”

6. The issue relates to whether the petitioner despite



having drawn salary in the pay scale of Rs. 2200-4000 is entitled to pension of his retiral benefits on the basis of last pay drawn or correct pay to which he was entitled in terms of the communication of the State Government contained in letter No. 841 dated 13.04.1991.

7. Learned counsel for the petitioner submitted that the matter has been agitated upto the Hon'ble Supreme Court, and once the post of Section Officer and Typist of the University and the State of Bihar being made equal, the petitioner is also entitled to the same and the relief claimed be granted to him. It was submitted that the pay scale of the post of Section Officer and that of the Establishment Officer being equal, there is no promotion involved and both are in the same cadre and, thus, the petitioner has to be considered at par with Section Officers and a distinction cannot be made in his case.

8. Learned counsel for the Patna University, who has filed counter affidavit, submitted that in view of the communication of the State Government contained in Letter No. 841 dated 13.04.1991, pay scale of Establishment Officer was 1640-2900 and thus, inadvertently, a higher pay scale of Rs. 2200-4000 was being paid to the petitioner which has now been corrected. He has taken a categorical stand that no recovery has been made from what has already paid to the petitioner and the dispute is only with regard to his pensionary amount.

9. Having considered the matter, the Court does not find



any merit in the writ petition. The petitioner may have superannuated at the time when he was getting a particular pay scale. However, if the same was not legally due to him, he cannot have a right to claim pensionary benefits based on such higher pay scale. Moreover, in the present case, there has been no recovery from what has already been paid to him. Only an error has been rectified and the respondents cannot be precluded from the same moreso as payment is to be made from public exchequer. The contention of learned counsel for the petitioner that just because the pay scale of Section Officer and Establishment Officer is the same and the Hon'ble Supreme Court has approved the position that the Section Officers of the University are at par with those under the State Government, would not mean that the Establishment Officer would also come under the purview of the said order of the Court as the post of Establishment Officer is a separate post to that of Section Officer. The order of the Hon'ble Supreme Court specifically relates to the post of Section Officer and Typist and, thus, cannot be said to cover the post of Establishment Officer, which was admittedly the post on which the petitioner was working at the time of his superannuation.

10. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

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