

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 17405 of 2015

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Om Prakash Son of Late Lekh Raj Ram resident of Village - Nagwan, P.O. Bahpura, P.S. Maner, District - Patna (Bihar).

.... Petitioner/s

Versus

1. The Union of India represented through Accountant General, Birchand Patel Path, P.S. Kotwali, Patna, Bihar.
2. The State of Bihar through the Agriculture Production Commissioner, Deptt. of Agriculture, Govt. of Bihar at Vikash Bhawan, New Secretariat, P.S. Secretariat, Patna, District – Patna.
3. The Director of Agriculture, Deptt. of Agriculture, Govt. of Bihar, at Vikash Bhawan, New Secretariat, P.S. Secretariat, Patna, District – Patna.
4. The Principal Secretary, Deptt. of Finance, Govt. of Bihar at Old Secretariat, P.S. Secretariat, Patna, District – Patna.
5. The Vice Chancellor, Rajendra Agriculture University, PUSA, Samastipur, Bihar.
6. The Registrar, Rajendra Agriculture University, PUSA, Samastipur, Bihar.
7. The Vice Chancellor, Bihar Agricultural University, Sabour, Bhagalpur.
8. Registrar, Bihar Agricultural University, Sabour, Bhagalpur, Bihar.
9. The Regional Director, Agricultural Research Institute, Lohiya Nagar, Sipara, Patna, District - Patna (A Unit of Respondent No. 7 and 8).

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jay Ram Sharma, Advocate
For the State	:	Mr. Lalan Kumar, AC to GP-9
For the Central University	:	Mr. Arvind Ujjwal, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 19-09-2017

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following



reliefs:

“A. For quashing of the memo no. 790 dated 19.04.2011 issued by the office of the Agriculture department, Government of Bihar, Patna (Annexure-8).

B. For direction to the respondent authorities to pay the correct and enhanced pension and gratuity taking into counting his past service, as government employee, in the department of Agriculture, rendered from 12.12.1956 to 22.10.1973 as the petitioner was a permanent employee since 21.11.1969 and the petitioner had acquired lien. That after absorption under the University the petitioner rendered his service on the Rajendra Agriculture University, PUSA, Samastipur w.e.f. 22.10.1973 to 28.02.1998 in the same office namely Agriculture Research Institute, Patna for the period of 41 years, 2 months and 15 days.

C. For passing any other order/s, command/s or appropriate writ/s which your Lordships deem fit and proper in the facts and circumstances of the instant case.”

3. The petitioner was appointed as Office Peon in the Agriculture Research Institute, Patna on 12.12.1956. His service was confirmed on the post of Laboratory Attendant on 21.11.1969. In terms of the option given by the State Government and the then Rajendra Agriculture University, Pusa, Samastipur (Now, Dr. Rajendra Prasad Central Agricultural University, Pusa, Samastipur) (hereinafter referred to as the ‘University’), temporarily he was appointed on the post of Lower Division Clerk. In terms of the notification dated 15.09.1982, on the option asked by the University for being absorbed in its service, as required, he submitted his



resignation from Government service. However, the resignation was submitted to the University in view of the fact that the University wanted the petitioner and other similarly situated persons to resign from Government service before they could be absorbed in the service of the University. It appears that the resignation letter having been forwarded to the State, it was accepted by order dated 01.02.1996, though with effect from 01.03.1982. The petitioner thereafter superannuated on 28.02.1998. The controversy arose when the petitioner applied for his pensionary benefits and the same were given to him counting only the period spent in the service of the University and not what he had spent under the State Government i.e., from 12.12.1956 to 22.10.1973.

4. As per the stand taken by the University, they had paid the amount of pensionary benefits for the period of service rendered under the University and have taken a stand that for the period of service under the State, it is the liability of the State Government.

5. Learned counsel for the State, as per the counter affidavit filed by the State authorities, submitted that since the petitioner had resigned from service to join the University on a higher post, the service rendered under the State is non pensionable.

6. Learned counsel for the petitioner submitted that such stand on the part of the State is erroneous, both on facts as well as in



law. It was submitted that the petitioner had never resigned to join on a higher post and rather he continued on the post in the University in terms of the joining option by the State and the University to similarly situated persons to opt for service under the University and later on when the University gave an option for permanent absorption, it came with a rider that the petitioner had to resign from Government service and in such background, the petitioner had resigned. He further submitted that the issue stands covered by a decision of the Hon'ble Supreme Court in the case of **Madhukar vs. State of Maharashtra** reported as **A.I.R. 2014 SC 2206**, the relevant being at paragraphs no. 12 to 15.

7. Learned counsel for the State is not in a position to controvert the fact that the petitioner had not resigned *suo motu* for joining another service i.e., under the University, but rather he was already working in the University in terms of the option given by the State and University and only for the purposes of the University permanently absorbing his services, the requirement was to resign from Government service, which he accordingly did and the same was accepted with effect from 01.03.1982. Further, learned counsel for the State was also not in a position to controvert that the issue has been settled by the Hon'ble Supreme Court in the case of **Madhukar** (supra).



8. For the reasons aforesaid, the writ petition stands allowed.

9. The respondents, especially the State is directed to ensure that for the period spent by the petitioner under the service of the State, proportional pensionary benefits under all heads are given to him. The same be done within two months from the date of production of a copy of this order before respondent no. 3.

(Ahsanuddin Amanullah, J.)

P. Kumar

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