IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12667 of 2012

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Dr. Vijay Kumar Jaiswal, S/O Sri Satya Narain Jaiswal, Senior Scientist-cum-Associate Professor, Sai. Science, Irrigation Research Station, Madhepura, P.S.- Madhepura, Distt.- Madhepura.

.... Petitioner

Versus

1. The Bihar Agriculture University through its Registrar, having Office at Sabore, Bhagalpur.
2. The Vice-Chancellor, BAU Sabore, Bhagalpur.
3. The Rajendra Agriculture University, through its Registrar, having Office at Pusa, Samastipur.
4. The Vice-Chancellor, RAU, Pusa, Samastipur.
5. The State of Bihar through Agricultural Production Commissioner-cum-Principal Secretary, Department of Agriculture, Govt. of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Sri Niwas Jha, Advocate and Sri A. B. Ojha, Sr. Advocate.
For the University	:	Mr. Dr. K.N. Singh, Sr. Advocate and Mr. Shailendra Kumar Singh, Advocate.
For the State	:	Mr. Kamil Akhtar, A.C. to A.A.G.5.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

CAV ORDER

7 25.07.2017 This writ application has been filed seeking direction upon the respondents as to include the petitioner under Pension Scheme in lieu of Contributory Provident Fund Scheme (hereinafter referred to as C.P.F.).

The petitioner wrote a letter dated 05.04.2008 to the Controller, Rajendra Agriculture University, Pusa, requesting therein that he wanted to opt Pension Scheme. Thereupon, the deductions made towards C.P.F. Scheme to the tune of Rs. 3,59,586/- was sent by the Assistant Controller, Regional Research

Institute, Agwanpur, Saharsa, in form of Bank Draft prepared in favour of the Controller, Rajendra Agriculture University, Pusa, vide letter no. 487 dated 22.05.2008. The petitioner again represented to the Controller of the said University vide letter dated 10.11.2011 as to include him under the Pension Scheme. In the meantime, the Controller of the said University, vide Letter No. 2094(A) dated 22.10.2011, requested the Joint Secretary, Department of Agriculture, Bihar, Patna, as to extend the benefit of pension to all those employees, who did not opt for subscribing to the Contributory Provident Fund, in terms of the provision contained in 16.1 (a)(b)(i) of the Statute of Rajendra Agriculture University, as also, in the light of the judgment of Patna High Court, rendered in the case of Arjun Kumar bearing CWJC No. 2041/2012, providing a list of the employees including the petitioner, who were to be absorbed under Pension Scheme.

The Controller, Rajendra Agriculture University, Pusa, vide letter no. 1497 dated 01.09.2012, intimated the Associate Director, Research, Regional Research Institute, Agwanpur, Saharsa, that the C.P.F. amount of the petitioner, earlier credited in favour of the Controller was not made in accordance with law, since the petitioner did not give application as to include him under the Pension Scheme within the stipulated time thus contribution amount was released back.

A counter affidavit has been filed on behalf of the

Respondent Nos. 1 and 2. It has been contended that petitioner was appointed in the year 1980 and he was subscriber of C.P.F. scheme and thereafter in the years 1990, 1995, 1996 and 2008, the University invited option as to opt the Pension Scheme but he failed to do so, thus he was retained under C.P.F. Scheme. It was further submitted that the petitioner submitted his application on 05.04.2008, which is beyond the date, prescribed for giving option under Pension Scheme and the same was forwarded by his Controlling Officer after 2½ years vide letter no. 488 dated 10.08.2010. Therefore, the petitioner was not included in the list of Pensioners as the University has already issued Office order bearing no. 28 dated 12.04.2008. The reasons behind rejection of the claim of the petitioner, as indicated in the Counter Affidavit, was that the application of the petitioner ought to have been reached through the Controlling Officer within a month from 31.03.2008 in terms of the Office Order No. 866 dated 21.02.2008 (Annexure-D).

From perusal of the Office Order No. 866 dated 21.02.2008, I do not find any such condition and stipulation of time as to opt the Pension Scheme rather such option was to given only for getting benefit of Contributory Provident Fund Scheme, within the stipulated time of one month.

Before I may consider the claim of the petitioner in the background of rival contention of the parties, it would be appropriate to notice a judgment rendered by this court in CWJC

No. 2041 of 2012 (Annexure-10), wherein identical issue was involved. This court while dealing with the exactly similar issue held thus:

> "It is evident from the narration of facts that earlier as per un-amended Statute, 1976 the only provision was with respect to CPF for all the employees of the University. However, by the amendment to Clause 16.1 of the Statutes as per Notification No. 1685 dated 17.04.1979 the scheme for pension was introduced in the University along with benefit of gratuity and G.P.F. The statutes were very clear that all employees appointed by the University would be entitled to pension except those who have opted for subscribing for CPF. There is nothing ambiguous regarding the said point in the Statutes. In the said circumstances, it was futile action on the part of the University that they have repeatedly sought for exercise of option with respect to employees of the University who have not got the benefit of Pension Scheme. As a matter of fact, the option was to be exercised only by those who wanted to be in the CPF scheme. From the facts and materials on record it is clear stand of the petitioner that he never exercised the option for CPF which fact could not be contradicted by the University by producing anything to show that the petitioner had opted for C.P.F. The only conclusion, therefore, is that in terms of Clause 16.1 of the Statutes the petitioner would be entitled to the benefit of Pension.
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> That being the position, the order dated 23.11.2011 passed by the Controller of the University by the order of the Vice Chancellor is

clearly contrary to the Statutes of the University and there was no occasion to deny the benefit of Triple Benefit Scheme i.e. Pension, GPF and Gratuity to the petitioner on the ground that the so called option of the petitioner was received through the Associate Dean-cum-Principal, Bihar Agricultural College, Sabour belatedly on 07.05.2008 after one and a half months of the time granted for exercise of option by the office order dated 21.02.2008. There was further no occasion for seeking any direction from the State Government to invite last option for Triple Benefit Scheme from the employees of the University at least with respect to those who had never exercised the option in favour of C.P.F. The said order dated 23.11.2011 is, accordingly, quashed."

In view of the facts and circumstances indicated above, specially taking note of the judgment rendered in CWJC No. 2041 of 2012 (Annexure-10), I am of the opinion that the petitioner would be entitled to the benefit of Pension Scheme.

The writ application is, accordingly allowed.

U.K./-

(Sudhir Singh, J)

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