

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6618 of 2016

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Gupteshwar Prasad son of Late Shiv Narayan Prasad, resident of Turhatoli, Main Road, Buxar, Police Station and District - Buxar

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna
3. The Veer Kunwar Singh University, Ara through its Registrar
4. The Vice Chancellor, Veer Kunwar Singh University, Ara
5. The Registrar, Veer Kunwar Singh University, Ara
6. The Principal, Maharshi Vishwanath College (M.V. College), Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the State : Mr. Prabhat Kumar Verma, AAG-3
For the Veer Kunwar Singh University : Mr. Kinkar Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-02-2017

Heard learned counsel for the petitioner Mr. Sanjay Kumar,
learned senior counsel for the State Mr. Prabhat Kumar Verma and
learned counsel for the Veer Kunwar Singh University, Bhojpur at
Ara.

2. This writ application has been filed by the petitioner for a direction to the respondent authority to pay the retirement benefits of the petitioner such as general provident fund, gratuity, leave encashment and group insurance with statutory interest along with due pension from the date of retirement to the date of order and further to direct the respondent authority to start monthly pension.



3. It is submitted by the learned counsel for the petitioner that the petitioner was appointed as a Routine Clerk on 01.05.1982 in Maharshi Vishwamitra College, Buxar. He had been working and taking payment regularly from the date of his appointment and his service was taken in regular establishment with effect from 20.08.2001. He submitted that on completion of sixty two years of service, he retired on 31.01.2014. It is contended that despite his retirement, he is not being paid his retirement benefits by the respondent authority.

4. Learned counsel for the petitioner submitted that the petitioner has already submitted his duly filled up pension application form which has also been forwarded by the Principal of the college to the Registrar of the University.

5. The University and the State have filed their respective counter affidavits.

6. The stand of the University in the counter affidavit is that the service of the petitioner was regularised vide letter no.675/Estab./11 dated 20.08.2011 on the post of Routine Clerk in Maharshi Vishwamitra College, Buxar from the date of initial appointment of the petitioner, but payment of retiral dues of the petitioner could not be made as the State is conducting an inquiry in respect of regularization of the employees having been made in the



year 2011, 2012 and 2013 respectively.

7. Learned counsel for the University submitted that the University has written a letter to the Director, Higher Education, Government of Bihar on 13th July, 2016 seeking direction in respect of payment of retiral dues to the petitioner, but no direction has been received so far from the Education Department regarding this matter and, hence, the University is facing difficulty in paying retiral dues to the petitioner.

8. Similarly, Mr. Prabhat Kumar Verma, learned senior counsel for the State submitted that since vigilance inquiry is being conducted in respect of absorption of the employees made in the year 2011, 2012 and 2013, no decision could be taken in respect of payment of pensionary benefits to the petitioner. He submitted that in the year 2011, 2012 and 2013 large number of employees were regularized by the University and pursuant to the letter of the University in this regard, the Education Department vide letter no.327 dated 23.02.2016 requested the Principal Secretary, Vigilance Department, Government of Bihar to inquire into the matter regarding appointment/regularization made by the Veer Kunwar Singh University, Ara in the year 2011, 2012 and 2013. He submitted that reminders have also been given in this regard to the Vigilance Department on 26th July, 2016. According to him, till the inquiry is



completed it would not be proper to issue direction to the respondent authority to pay retiral dues to the petitioner.

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

10. From the pleading of the parties, it would be evident that there is no dispute to the fact that the petitioner was appointed as a Routine Clerk on 01.5.1082 in Maharshi Vishwamitra College, Buxar and retired on attaining the age of superannuation on 31.01.2014. The dispute is only to the fact as to whether or not regularization of his service in the years 2011 was proper. In my view, the entire retiral dues of a person cannot be withheld only on the ground of *ex-parte* vigilance inquiry going on in the matter. It is an accepted position that the gratuity and pension are not bounties. An employee earns these benefits by dint of long, continuous and unblemished services. It is also settled position that the pensionary benefits of an employee are in the nature of “property” and the same cannot be taken away without due process of law as per the provisions of Article 300-A of the Constitution of India.

11. It is not the case of the respondents that any disciplinary proceeding was initiated against the petitioner while he was in service. It is also not the case of the respondents that any proceeding under the Pension Rules has been initiated against him so far. It is also not the



case of the respondents that the petitioner is being prosecuted criminally in any judicial proceeding.

12. Under the circumstances stated above, I am of the considered opinion that right of the petitioner to receive pensionary benefits cannot be frustrated for an indefinite period merely in the name of an on going vigilance inquiry.

13. Accordingly, I direct the respondents to pay the retiral benefits of the petitioner within a period of four months from the date of receipt/production of a copy of this order failing which the petitioner would be entitled to receive interest at the rate of eight per cent per annum from the date on which the amount became due till the date of actual payment.

14. The Registry is directed to communicate a copy of the order to the respondents no.2 to 5 through fax forthwith.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	-----
Uploading Date	2.3.2017
Transmission Date	

