

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14765 of 2015

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Dr. J. P. Singh, Formerly Professor of Sociology, Patna University, resident of 25,
Ram Krishna Path, North S.K. Puri, P.S.- S.K. Puri, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Education,
Government of Bihar, Patna.
2. The Chancellor of Universities, Governor's Secretariat, Patna.
3. Patna University through the Registrar, Patna University, Patna.
4. The Vice-Chancellor, Patna University, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Advocate
For the University : Mr. Nivedita Nirvikar, Advocate
For Hon'ble Chancellor : Mr. R. K. Giri, Advocate
For the State : Mr. Ramesh Kumar Singh, AC to GP-15

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 22-05-2017

The present writ application has been filed by the petitioner for direction upon the respondents to pay all the retirement benefits to him which, according to him, have been illegally withheld by the respondent university.

2. The factual matrix of the case are as under :-

The petitioner was appointed as a Lecturer in Patna University, Patna on 02.07.1973 on a purely temporary basis and substantively on the recommendation of the Bihar Public Service



Commissioner with effect from 06.07.1976.

3. He was promoted to the post of Reader with effect from 05.08.1985 and thereafter to the post of University Professor of Sociology with effect from 05.08.1981 on the basis of recommendation of the Bihar State University Service Commissioner vide notification dated 10.02.1998.

4. While the petitioner was working on the post of Professor of Sociology in Patna University, he was offered the post of Pro Vice-Chancellor of the Patna University, Patna vide notification dated 03.08.2011 of the Governor's Secretariat and, accordingly, the petitioner joined on the post of Pro-Vice Chancellor, Patna University, Patna on 04.08.2011.

5. The then Vice-Chancellor levelled certain charges against the petitioner and constituted an inquiry committee consisting of three Professors through a notification dated 26.11.2012. The matter was also communicated to the Chancellor for taking necessary action against the petitioner.

6. On receiving the allegation from the Vice-Chancellor against the conduct of the petitioner, the Chancellor took cognizance of the matter and served a show-cause notice to the petitioner through Governor's Secretariat letter dated 05.12.2012 requiring the petitioner to show-cause and submit explanation in respect of following allegations :



“(i) On 17.10.2012, as Pro-Vice Chancellor without proper authority and permission you took part in T.V. Programme organized by Aryan T.V. with a student leader against whom there are several criminal cases pending in Local Than. It is also reported that in T.V. programme, you condemned the working of High Court, Chancellor and the State Govt.

(ii) On 04.08.2012 when S.O. Accounts, Mr. Dhiraj Kumar Verma objected to pass Pro-Vice chancellor’s illegal bills, then you wanted the Vice Chancellor in writing to transfer S.O. from that section.

(iii) When Anup Kumar, Assistant, Store Section refused to issue wrong “No Dues Certificate” to Pro-Vice Chancellor, then you wanted the Vice Chancellor again to transfer the Assistant.

(iv) During one year of tenure as Pro-Vice Chancellor you changed six drivers alleging false charges on one or other pretext and in whimsical manner. You also ordered one driver to park your vehicle at the Railway Track behind A.N. College. The driver made a written complaint against you to the Vice Chancellor regarding this matter.

(v) Your behaviour as Pro- Vice Chancellor with Controller of Examinations is not like an officer with another officer. The Controller of Examinations complained to the Vice Chancellor regarding ill-treatment of him by you as Pro- Vice Chancellor.

(vi) During the absence of Vice Chancellor, the Pro- Vice Chancellor discharges day to day works of the Vice Chancellor’s office and in doing that the Pro-Vice Chancellor has to do only routine works, but the Vice Chancellor has reported that you as Pro- Vice



Chancellor in such period began to pass order even in policy matters, such as changes of Coordinators of all Vocational Courses run by different Departments and Colleges in Patna University.

(vii) In the period of commuted leave (23.07.2012 to 16.08.2012) you came to the office (though not required to do so) to dispose the matters of your interest only on different dates and time.

(viii) In the period between 07.09.2011 and 21.07.2012, you as Pro- Vice Chancellor were absent in two Syndicate and two Academic Council meetings without giving information and reasons thereof to the University even though you were present in Headquarters/University premises.

(ix) As Pro- Vice Chancellor you refused to sign Under Graduate results to do which work you are statutorily authorized and ordained by the Act. This amounts to dereliction of duty on your part.

(x) As Pro- Vice Chancellor you have not done any work whatsoever of Students' welfare although you are Statutorily enjoined to perform that work specifically as a responsibility under the Act.

(xi) At the time of joining on the post of Director, Higher Education, HRD Department, from professorship of Patna University, you have not taken permission, lien from the University Service. You were also not relieved of by the University before joining on the said post of Director.

(xii) As Pro- Vice Chancellor you have issued order by Memo No.42/P.V.C/2012 dated 20.10.2012 which purported to cancel the order passed by the Vice Chancellor and issued vide Memo No.1491 dated 18.10.2012.



(xiii) In Aryan Sandesh Newspaper editions dated 15.10.2012 and 17.10.2012 you as Pro- Vice Chancellor have given statements to the press against the Vice Chancellor which were carried and published by the newspaper with headings tarnishing the image of the present Vice Chancellor.

(xiv) You yourself being a top officer of the University complained in writing, (addressed directly or unauthorisedly to Hon'ble Chancellor instead of Chancellor's Secretariat) against Senior & Junior Officers of the University, and thereby you conspired against the academic and administrative interests as well as reputation of the University. In this manner, you as Pro Vice Chancellor have dabbled in and interfered with the performance of duties and responsibilities by the Vice Chancellor and the Registrar of the Patna University."

7 On receiving show-cause notice dated 05.12.2012, the petitioner submitted his reply to the Secretariat of the Governor vide letter no. 14.12.2012 denying all the allegations. Thereafter, no further action was taken against the petitioner pursuant to the aforesaid notification dated 05.12.2012. The petitioner did not receive any communication in this regard from the Governor's Secretariat either directly or through the university stating that the departmental proceeding was pending against him.

8. However, the departmental proceeding continued at the university level. The Vice-Chancellor put the



petitioner under suspension on 19.01.2013 by a notification issued vide Memo No. 387/R dated 19.01.2013 on charge of absence from duty without notice with effect from 10.12.2012 along with those enumerated in Hon'ble Chancellor's letter dated 05.12.2012.

9. The suspension of the petitioner, however, was finally revoked on 16.02.2015 whereafter the petitioner was asked to join back his duty as Professor in the P.G. Department of Sociology on 22.04.2015.

10. On joining back the post after revocation of suspension, no proceeding was initiated against the petitioner till last date of superannuation on 31.07.2015.

11. As on the date of superannuation, no retiral benefit was given to the petitioner, he appealed before the Chancellor for payment of his retirement benefits. On such appeal, the Chancellor vide Memo No. PU (Appeal)-10/2013-1206/GS(1) dated 19.08.2015 passed order for payment of pension and retirement benefits to the petitioner at the earliest. Accordingly, the petitioner requested the Vice-Chancellor to comply with the order but no payment of retirement benefit of the petitioner was made.

12. Hence, the instant writ application has been filed by the petitioner.

13. At this stage, it would be pertinent to note that during the pendency of the present application, certain interim



orders were passed by this Court, pursuant to which the respondent university has paid Rs.2,50,000/-against pension and a further amount of Rs.21,63,567/- to the petitioner through banker's cheque nos. 715670, 715671 and 7105672 dated 03.03.2017 of Allahabad Bank, Patna University Branch, which includes:

- (i) Provisional Pension and Dearness Relief from 01.08.2015 to 28.02.2017 at the rate of 75 per cent of full pension for Rs.12,25,746.00/-;
- (ii) Payment under Group Insurance Scheme for Rs.43,689.00/-;
- (iii) Salary for the month of June, 2015 for Rs.1,71,175.00/-; and
- (iv) Final Payment of GPF and interest for Rs.528245.00/- and Rs.1,95,401.00/- respectively.

14. It is submitted by the learned counsel for the petitioner that following retirement dues are yet to be paid :-

- (i) Gratuity;
- (ii) Remaining 25 per cent of the full pension since provisional pension at the rate of 75 per cent has been paid so far; and
- (iii) Leave Encashment.

15. It is stated that the respondent authorities especially the Vice-Chancellor has deliberately, willfully and with malice not paid the aforesaid retiral benefits to the petitioner in the



name of a departmental proceeding being pending against the petitioner.

16. *Per contra*, learned counsel for the university submitted that a departmental proceeding against the petitioner was pending while he was in service and since the said proceeding could not conclude till his superannuation, the petitioner has been allowed to be paid only 75 per cent of provisional pension vide PPO 2367 dated 12.01.2016 as per the provisions contained in Rule 43(b) of the Bihar Pension Rules, 1950. She contended that final decision regarding payment of other admissible dues would be taken after the completion of the departmental proceeding. She submitted that the allegation of the petitioner against the Vice-Chancellor of the university is baseless.

17. In reply to the submission made by the learned counsel for the university, learned counsel for the petitioner submitted that as a matter of fact, there is no valid departmental proceeding pending against the petitioner. He contended that Rule 43(b) of the Bihar Pension Rules is not applicable to the employees of the university. He contended that notification dated 26.11.2012 issued against the petitioner while he was serving as a Pro-Vice Chancellor was without jurisdiction as the Pro-Vice Chancellor is appointed by the Chancellor and thus, the Vice-Chancellor had no jurisdiction to initiate a departmental proceeding against him. He



contended that the notification dated 26.11.2012 issued against the petitioner was not a charge-sheet and, therefore, there was no departmental proceeding pending against the petitioner on the date of his retirement. He contended that the respondents are liable to pay all admissible dues to the petitioner without any further delay.

18. On query made by this Court, learned counsel for the university submitted that it is wrong to state that Rule 43(b) of the Bihar Pension Rules, 1950 is not applicable to the university servants. She submitted that Retirement Benefit Rules as contained in Appendix 'A' to the Statute clearly stipulates that in all matters, not specifically dealt within these Rules (both Appendix 'A' and 'B'), the rules and orders applicable to the employees of the Government of Bihar, will apply *mutatis mutandis* to the employees of the university. She has also placed reliance on Clause 26 of the Procedural Instructions regarding sanction and payment of retirement benefit admissible under the Statute for grant of retirement benefit in order to support her contention that the provisions of Bihar Pension Rules will apply in so far as procedure regarding grant of pension/gratuity is concerned.

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

20. I find substance in the argument of the learned counsel for the petitioner that notification dated 26.11.2012



contained in Annexure-15 is not a charge-sheet and, therefore, no departmental proceeding was pending against the petitioner on the date of his superannuation.

21. The notification dated 26.11.2012 issued against the petitioner under the signature of the Registrar, Patna University reads as under :-

“NOTIFICATION

An enquiry committee is hereby constituted consisting of the following persons:-

1. Prof. (Dr.) Arun Kumar Sinha, Principal, Patna Science College & Ex. Dean, Faculty of Science, P.U. - Chairman-cum-Director
2. Prof. (Dr.) Amar Nath Singh, Member, Syndicate, P.U. - Member
3. Prof. (Dr.) P.K. Poddar, Principal, B. N. College and Member, Syndicate, P.U. - Member

The above committee will enquire into the following allegation against Dr. J. P. Singh, Professor, Department of Sociology, P.U. and Pro-Vice-Chancellor, P.U.:-

1. The allegations of misuse of official position:
 - a. Writing against Mr. Dhiraj Kumar Verma, S.O. (Accounts) P.U.
 - b. Writing against Mr. Anup Kumar, Assistant, Store Section, P.U.
 - c. Complaint letter of Mr. Binod Kumar, Driver, P.U.
 - d. Complaint letter of Dr. Binay Soren, Controller of Examinations, P.U. and ST teacher of the Department of Political Science, P.U.
 - e. Leakage and misuse of official papers of



the University.

2. Misconduct by way of presenting himself in electronic media against the interest of the University on 17.10.2012 on Aryan T.V. and in other print media.

3. Charges of insubordination :

a. Abstaining from meetings of the Statutory bodies like Syndicate, Academic Council, P.G.R.C. and other disobeying the orders of the Vice-Chancellor, P.U.

b. Issuing orders beyond his jurisdiction and passing uncalled for and objectionable remarks against the officers & employees of the University.

4. Misuse of Official position:

While on commuted leave (from 23.07.2012) to 16.08.2012) disposed of matters of his own interest.

5. Misconduct :

Joined the post of Director, Higher Education, Govt. of Bihar without taking permission/lien from the University which was condemned by the P.U. Syndicate in its meeting dated 24.04.2010.

6. Dereliction of duties :

Attending office in very irregular manner & non cooperative with the Vice-Chancellor in proper functioning of the University.

By order of the Vice-Chancellor,

Sd/

Registrar

Patna University, Patna”



22. From a bare perusal of the aforesaid notification, it is evident that the same relates to constitution of an enquiry committee by the Vice-Chancellor. By no stretch of imagination, it can be called to be a charge-sheet.

23. A departmental proceeding is deemed to be initiated only when a charge-sheet is issued. Article 16(4) of the Statute relating to general conditions of service clearly stipulates the manner in which charges are required to be drawn up. It provides that each charge must be specified. Charge should be drawn up and separately numbered and should give the date, occasion and nature of the offence committed. The allegations made in the notification dated 26.11.2012 did not give any specific details of the misconduct against the petitioner.

24. Moreover, the notification dated 26.11.2012 was issued against the petitioner while he was serving as a Pro-Vice-Chancellor. The petitioner was appointed Pro-Vice-Chancellor vide order dated 03.08.2011 by the Chancellor under Section 14 of the Patna University Act, 1976 and thus, the Vice-Chancellor had no jurisdiction to initiate a departmental proceeding against him. Hence, the notification issued under the signature of the Registrar dated 26.11.2012 was without jurisdiction.

25. I also find substance in the argument of learned counsel for the petitioner that Rule 43(b) of the Bihar Pension



Rules, 1950 is not applicable in case of the university servants. The Statute providing for General Conditions of Service of the employees of the Patna University provides for initiation of disciplinary proceedings in Articles 15, 16 and 17 in so far as employees of the university are concerned. Such provisions do not provide for any proceeding after superannuation of an employee. The Retirement Benefit Statute does not contain any provision akin to Rule 43(b) of the Bihar Pension Rules. The reliance placed by the learned counsel for the university on Rule 30 of Appendix 'A' provided in the aforesaid Statute is thoroughly misplaced. The Retirement Benefit Statute has 8 articles. Thereafter, certain Rules are provided in Appendix 'A' and 'B'. Rule 30 of Appendix A provides as follows:

“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.”

26. The aforesaid provision apparently is qualified by the words 'in all matters not covered within these Rules (both Appendix 'A' and 'B')'. Therefore, it is restricted to Appendix 'A' and 'B', which provide for Retirement Benefit Rules. The Rules provide for various schemes in which GPF, Pension and Gratuity are to be granted. They are not substantive



provisions. Article 3 of the Statute provides for application of this Statute and prescribes that the employees shall be entitled to opt for one of the alternative schemes set out in Appendices 'A' and 'B'. The Articles of the Statute are not covered by the expression rules mentioned in Rule 30 as stated above. The other provisions relied upon by the university is Clause 26 of the Procedural Instructions regarding sanction and payment of Retirement Benefit admissible under the Statute for grant of retirement benefit. The aforesaid instructions are issued by the Inter-University Board. Article 6 of the Retirement Benefit Statute clearly provides that the sanction and payment of retirement benefit admissible under the Statutes shall be regulated by such procedural instructions as may be issued by the university on the advice of the Inter-University Board.

27. Thus, it would be evident that the aforesaid instructions are subject to the Retirement Benefit Statute and are not binding upon the university. Such instructions cannot, thus, be said to be incorporating a substantive provision like Rule 43(b) of the Bihar Pension Rules, in the University Statute.

28. In this regard, I may refer to the decision of this Court rendered in the case of **Dr. Shaligram Singh vs. Magadh University & Ors. [2001 (4) PLJR 192]**, wherein this Court held that the procedural instructions issued by the Inter-University



Board is only in the advisory capacity and thus, unless the provision with respect to grant of benefit of restoration of commuted portion of pension is incorporated in the Retirement Benefit Statute, any change made in the Bihar Pension Rules cannot be made applicable to the employees/teachers of the university.

29. In **Principal, Kailash Prasad Singh vs. Vice-Chancellor, B.R.A., Bihar University & Ors. [2013 (3) PLJR 663]**, this Court has also held that there is no provision like Rule 43(b) of the Bihar Pension Rules in the University Statute which provides for a departmental proceeding even after superannuation.

30. In view of the discussions made hereinabove, this Court is of the view that no departmental inquiry was ever validly and legally instituted against the petitioner and the so-called proceeding initiated against the petitioner is wholly without jurisdiction and merely a sham to deny the petitioner his legal admissible retiral dues.

31. Accordingly, the respondent university and its authorities are directed to make payment of gratuity, remaining 25 per cent of full pension and the admissible leave encashment to the petitioner without any delay as early as possible but not later than two months from the date of receipt/production of a copy of this order, failing which the respondent university shall be required to



make payment of interest at the rate of eight per cent per annum to the petitioner on and from the date of expiry of two months stipulated hereinabove till the date of actual payment to the petitioner.

32. With these observations and directions, the writ application is disposed of.

33. The parties shall bear their own costs.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.05.2017
Transmission Date	NA

