

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.269 of 2016

IN

Civil Writ Jurisdiction Case No. 19502 of 2011

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Dr. Brahm Deo Sah (Rtd. Principal, Magadh University, H.Q Bodh Gaya) S/o Late Janaki Sah, Resident of Vijay Nagar, (Hanuman Nagar), P.S.- Patrakar Nagar, District- Patna, Pincode- 800026.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Secretary Human Resources Development Department, Govt. of Bihar, Patna.
3. Magadh University, Bodh Gaya, through the Vice Chancellor, P.S.- Magadh University, Bodh Gaya, District- Gaya.
4. The Registrar, Magadh University, P.S.-Magadh University, Bodh Gaya, District- Gaya.
5. The Finance Officer, Magadh University, P.S- Magadh University, Bodh Gaya, District- Gaya.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Hemendra Prasad Singh, Sr.Adv. Mr. Ramashray Roy, Adv. Mr. Rang Nath Dwivedi, Adv.
For the State	:	Mr. Niraj Kumar, AC to GA-10
For the University	:	Mr. Ritesh Kumar, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-07-2017

Seeking exception to an order dated 04.12.2015 passed by the writ Court in Civil Writ Jurisdiction Case No.19502 of 2011 so far as it denies the actual monetary benefit to the appellant having acquired Ph.D. Degree prior to 01.01.1996 with effect from 27.07.1998 and only restricting its payment with effect from 18.05.2010, this appeal has been filed under Clause X of the Letters Patent.

On the basis of a recommendation made by the



University Grants Commission, a decision was taken to grant two advance increments to such teachers who had acquired the Ph.D. Degree prior to 01.01.1996. Admittedly, the appellant had also acquired the said Degree and when it was not granted to him, he filed the writ application in question. During the pendency of the writ application, we find that the order was passed granting benefit to the appellant with effect from 18.05.2010 and it was ordered that the claim of the appellant for actual payment from 27.07.1998 cannot be accepted but he would only be granted proforma pay fixation from 27.07.1998 and actual monetary benefit from 18.05.2010. Challenging this action in only granting proforma benefit from 27.07.1998 and not granting actual monetary benefit, this appeal has been filed.

Having heard the learned counsel for the parties, we find that apart from the fact that various other identically situated teachers have been granted the actual benefit with effect from 27.07.1998 when the decision was taken by the State, in the case of present appellant the benefit of actual payment is being denied only on the ground that after retirement from the service in the year 2001 he approached the University for payment of his post-retiral benefits by filing CWJC No.6076 of 2002 and C.W.J.C. 5293 of 2004 followed by filing of a contempt application being M.J.C. No.2020 of 2011 and when these matters were pending no such claim has been made



by the appellant that he was not getting two advance increments from 27.07.1998.

In our considered view when all other identically situated teachers have been granted the benefit effective from 27.07.1998, the appellant is also entitled to the said benefits. Merely because in the earlier round of litigation the appellant had not agitated his claim with regard to payment of two advance increments from 27.07.1998, he cannot be deprived of the said benefits.

Keeping in view the aforesaid, we allow this appeal, direct for payment of two advance increments to the appellant effective from 27.07.1998. The payment must be made by the State Government within a period of two months from the date of receipt/production of a copy of the order. So far as the right of the respondents to take any other action against the appellant is concerned, it is for the respondents to proceed in the matter in accordance with law.

(Rajendra Menon, CJ)

Arvind/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	
CAV DATE	
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