

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6334 of 2015

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Krishna Nandan Singh son of Late Jageshwar Singh, Resident of 3C Janaki Kutir,
Ambedkar Path, Bailey Road, Patna - 14

.... Petitioner/s

Versus

1. The Magadh University, the Registrar of the University, Bodh Gaya, Gaya
2. The Vice Chancellor, Magadh University, Bodh Gaya, Gaya
3. The Registrar, Magadh University, Bodh Gaya, Gaya
4. The State of Bihar through the Principal Secretary, HRD Department, Govt. of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghav Prasad No.-1, Advocate
For the Respondent No.4 : Mr. Ravish Chandra, A.C. to S.C.6
For the Respondents no.1 to 3 : Mr. Girijesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-02-2017

This writ application has been filed by the petitioner, who retired from the service as an Associate Professor on 31st August, 2007, for directing the respondents to pay him full pension after re-fixation of his basic pension.

2. The petitioner was appointed as a Lecturer in the Department of English by the Governing Body on the recommendation of the University Service Commission vide order dated 27th March, 1999 with effect from 20th April, 1976. He was promoted to the rank of Reader by the Magadh University (for short 'the University') under the time bound scheme on completion of ten years of service and retired from service while working as a Reader in



the Department of English on 31st August, 2009.

3. It is contended by the learned counsel for the petitioner that though the petitioner is entitled for full pension after twenty years of qualifying service in the light of the judgment and order of this Court dated 15th May, 2014 in CWJC No.176 of 2013 and other analogous cases, the University has fixed proportionate pension of the petitioner treating him to be in service for 29 years and requiring 33 years of service for grant of full pension.

4. It is submitted that pursuant to the order passed by this Court in CWJC No.176 of 2013 and other analogous cases and after refusal of the stay order of the Division Bench in the Letters Patent Appeal against the same, the Finance Department of the State Government has also issued a notification dated 15th January, 2016 whereby the government servants have been made entitled to get full pension on completion of 20 years of qualifying service. He contended that the relevant clause of the Government notification whereby the person, who retired during the period 01.01.2006 and 23.09.2009, has been modified by the subsequent notification of the State whereby full pension has been allowed to all the employees, who retired on or after 01.04.2007 upto 23.09.2009 and have completed 20 years of service.

5. The University has contested the matter. Learned counsel



for the University submitted that initially the petitioner was appointed by the Governing Body of the college with effect from 3rd September, 1976, but the deduction of provident fund was made from September, 1980. As such, as per the provision, calculation of qualifying period of service of the petitioner was taken into account from 1st September 1980 to 31st August, 2009, which comes to 29 years only. He submitted that as per the notification contained in memo no.15/D1-13/11-1674 dated 16th August, 2012 issued by the State Government the pensioner, who retired after 29th March, 2009, is entitled for full pension on completion of twenty years of service only, but the person, who retired during the period 01.01.2006 to 23.09.2009, are entitled to full pension only after completion of 33 years of service. He contended that since the petitioner has completed only 29 years of service as such full pension cannot be paid to him.

6. A counter affidavit has been filed on behalf of respondent no.4, the State of Bihar wherein it is stated that the State Government vide its memo no.819 dated 23.09.2009 has implemented the revised pension with effect from 01.01.2006 to its employees, as per recommendation of Sixth Pay Revision Committee. It is further stated that by clause 2(ii)(a) qualifying service of 33 years for getting full pension has been replaced by 20 years, but for the employees already retired upto issuance of the said letter, the qualifying service for



getting full pension remained as 33 years.

7. Learned counsel for the State submitted that in view of the decision of the State Government pension, family pension and gratuity have been revised in respect of the retired employees of the Universities and the constituent colleges by resolution, as contained in memo no.1674 dated 16.08.2012. He contended that since the petitioner has retired on 31st August, 2009, his pension has also been fixed in view of the resolution dated 16.08.2012. It is also contended by the learned counsel for the State and the University that the order dated 15.05.2014 passed by the learned Single Judge in CWJC No.12333 of 2010 has already been challenged in L.P.A. No.1348 of 2014 and in that view of the matter, the prayer of the petitioner which is based on the order of learned Single Judge cannot be allowed.

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

9. In **CWJC No.176 of 2013 (Raksha Ray and Others vs. The State of Bihar and Others)** and its analogous cases the issue before this Court was whether the benefit of only 20 years of service for full pension would be limited to the employees, who retired after the date of notification or the same would also be applicable to the employees, who retired between 01.01.2006 and 23.09.2009. The contention of the petitioner in that case was that keeping a group of



employees, who retired between 01.01.2006 and 23.09.2006, in a different class is discriminatory and is violative of Article 14 of the Constitution.

10. After hearing the parties at length in **Raksha Ray (supra)**, the learned Single Judge held that benefits of only 20 years of service for full pension would be extended to all such persons, who had superannuated on or after 01.04.2007 instead of 23.09.2009. The relevant clause of Resolution was struck down to that extent and the writ applications were allowed vide order dated 15.05.2014.

11. It is true that the State has challenged the order of the writ court by filing L.P.A. No.1348 of 2014, but the prayer for stay of the order dated 15.05.2014 passed in CWJC No.12333 of 2010 made by the State has been dismissed by the Division Bench.

12. The petitioner has also brought on record the subsequent notification of the State dated 15.01.2016 whereby in compliance of the order passed by this Court in CWJC No.176 of 2013 and other analogous cases and after refusal of stay order by the Division Bench in L.P.A. No.1348 of 2014, the Finance Department resolved to give full pension to all the employees of the State Government, who had completed 20 years of service and retired on or after 01.04.2007 upto the notification dated 23.09.2009.

13. If the State itself has accepted the order passed by the



learned Single Judge and extended the benefit of full pension to all the employees of the State Government, who retired on or after 01.04.2007, there is no reason why the petitioner, who has completed 29 years of qualifying service would not be paid the full pension.

14. In this regard, it would be relevant to note that the general condition of service of the employees of the University is regulated by the Statutes approved by the Chancellor on 20th September, 1980. Section II of the Statutes deals with pension of the employees of the University. Paragraph 16 of Section II stipulates that any change in the rate of pension, as also relief in pension under the Bihar (Government) Pension Rules, would be equally applicable to the University employees. In past also the University has taken its decision in respect of payment of pension and gratuity etc. of its retired employees by passing different resolutions from time to time in the light of the decisions of the State Government.

15. In that view of the matter, in my considered opinion, the petitioner is entitled to receive full pension, as he has already completed more than 20 years of service before his superannuation on 31.08.2009.

16. Accordingly, I direct the respondent nos.2 and 3 to refix and pay full pension to the petitioner. The entire exercise in this regard must be completed within four months from the date of



receipt/production of a copy of this order.

17. With the aforesaid observations and directions, the writ application is disposed of.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14.02.2017
Transmission Date	

