

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.14574 of 2015**

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Durganand Jha, S/o Late Chaturanand Jha, Resident of Chanakyapuri, Ward No.8,  
Basantpur, P.S.- Birpur, Dist- Supaul.

.... .... Petitioner

Versus

1. The B.N. Mandal University through the Registrar of the University, Lalu Nagar,  
Madhepura.
2. The Vice-Chancellor, B.N. Mandal University, Lalu Nagar, Madhepura.
3. The Registrar, B.N. Mandal University, Lalu Nagar, Madhepura.
4. The State of Bihar through the Principal Secretary, HRD, Deptt. Govt. of Bihar,  
Patna.

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Raghav Prasad No.-1, Advocate

For the Respondent/s : Mr. U. S. S. SINGH, GP-1

For the B.N. Mandal University: Mr. Shashi Bhushan Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 07-02-2017**

It is a case of gross neglect on the part of the respondents in making payment of retiral dues to the petitioner.

2. The present writ application has been filed for directing the respondents to pay all the retiral dues including arrear of pension, gratuity, leave encashment, group insurance, etc. to the petitioner, who retired as a Reader in the Department of English on



31<sup>st</sup> of December, 2009 while working at L.N.M.S. College, Birpur, Supal.

3. The facts of the case are not in dispute. The petitioner was appointed as Lecturer in the Department of English and joined on 21.04.1976 in L.N.M.S. College, Birpur, Supaul on the substantive post. He was promoted to the rank of Reader on 21.04.1986 and retired on 31<sup>st</sup> of December, 2009 in the same capacity. After retirement, a P.P.O. was issued to the petitioner for payment of pension and other retiral dues by the Principal of the college on 24<sup>th</sup> July, 2015. After issuance of pension payment order, the payment of current pension started.

4. It is submitted by the learned counsel for the petitioner that besides arrear of pension, there is arrear of past salary and other retiral dues have also not been paid to the petitioner even after six years of retirement by the university.

5. Learned counsel appearing on behalf of the B.N. Mandal University (for short 'the University') submitted that on calculation the amount of gratuity and leave encashment of the petitioner comes to Rs.10,00,000/- (rupees ten lakhs), and comes to Rs.7,49,050/- (rupees seven lakhs forty-nine thousand fifty) respectively. He submitted that total payable pension of the petitioner has been calculated from 01.01.2010 to 30.09.2016,



which comes to Rs.43,78,055/- (rupees forty-three lakhs seventy-eight thousand fifty-five) against which, the petitioner has already been paid Rs.40,74,538/- (rupees forty lakhs seventy-four thousand five hundred thirty-eight) and the remaining amount of Rs.3,03,517/- (rupees three lakhs three thousand five hundred seventeen) is yet to be paid to him. He submitted that the group insurance amounting to Rs.43,674/- (rupees forty-three thousand six hundred seventy-four) has also been paid to the petitioner on 18<sup>th</sup> May, 2012. He submitted that under the heads of group insurance, leave encashment and difference of pension, total payable amount to the petitioner is Rs. 20,52,567/- (rupees twenty lakhs fifty-two thousand five hundred sixty-seven) and the same would be paid within a period of two weeks.

6. In reply, learned counsel for the petitioner submitted that the petitioner has been denied payment of his retiral dues for long and, for that, he deserves to be suitably compensated by way of payment of interest.

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

8. The University has accepted non-payment of over Rs. 20,00,000/- (rupees twenty lakhs) to the petitioner despite lapse of more than six years from the date of his retirement. Further,



it would be evident that the payments which have already been made to the petitioner under different heads were also made after long delay.

9. Article 21 of the Constitution of India guarantees everyone a fundamental right of livelihood which includes entitlement to receive deferred wages in accordance with rules after retirement. Non-payment of retiral benefits, therefore, is a violation of fundamental right under Article 21 of the Constitution. The right to receive pension has not only been considered as fundamental right, but has also been considered as a right to property under Article 300-A of the Constitution of India, which cannot be taken away except by authority of law.

10. In *D.S. Nakara and Others v. Union of India* [(1983) 1 SCC 305], the Supreme Court has made the following observations on the right to pension:-

***“The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar 1971 (Supp.)S.C.R. 634 : (AIR 1971 SC 1409) wherein this Court authoritatively ruled that***



***pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. ...”***

11. Under the rules an employee is entitled to receive pension on the date of his retirement. The Supreme Court has held in numerous cases that an employee who is denied his retiral benefits for long must be compensated by the Court by way of payment of suitable interest. The university has failed to satisfy the Court that the delay caused in payment of pension to the petitioner is, in any way, attributable to the conduct of the petitioner.

12. In that view of the matter, I direct the respondents to pay the admitted amount of Rs.20,52,567/- (rupees twenty lakhs fifty-two thousand five hundred sixty-seven) to the petitioner under different heads of the retiral dues within four weeks from today with interest at the rate of 8% per annum from the date the payments became due till the date of their actual payment. In case of failure to pay the amount with interest within four weeks from today, the University shall be liable to pay a cost of Rs. 1,00,000/- (rupees one lakh) to the petitioner and the cost, so paid, may be realized from the person responsible for causing the delay in



payment of the petitioner in accordance with law.

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

**(Ashwani Kumar Singh, J.)**

Sanjeet/-

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