

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1603 of 2012
IN
Civil Writ Jurisdiction Case No. 9776 of 2006

- =====
1. Bihar Legislative Assembly, Patna through the Secretary of the Assembly
 2. The Speaker, Bihar Legislative Assembly, Patna
 3. The Secretary, Bihar Legislative Assembly, Patna

.... Appellants

Versus

1. Raghav Prasad Son of Late Adalat Singh, Resident of Village- Itawa, P.O.- Itawa, P.S.- Pachrukhi, District- Siwan
2. The State of Bihar
3. The Finance Commissioner, Govt. Of Bihar, Patna
4. The Accountant General for the State of Bihar, R. Block Crossing, Patna
5. The District Treasury Officer, Siwan

.... Respondents

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Appearance :

For the Appellants	: Mr. Devendra Kr. Sinha, Sr. Advocate Mr. Chandra Mauli Chaurasia, Advocate
For Respondent No.1	: Mr. Raghav Prasad (In person)
For State-Respondent	: Mr. Manoj Kumar Sinha, AC to AAG 9
For the Accountant General:	Mr. Madhuresh Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 13-02-2017

The writ petitioner, who is respondent no. 1 in this appeal, is appearing in person. We have heard him.

2. This appeal has been preferred by the Bihar Legislative through its Speaker and Secretary, being aggrieved by the judgment and order dated 29.11.2010 passed in CWJC No. 9776 of 2006 by the learned Single Judge allowing the writ petition filed by the respondent no. 1 to this appeal.



3. The facts of the case are not in dispute. The writ petitioner was appointed a Lecturer in L.S. College, Muzaffarpur under the then Bihar University on 23.02.1976. While working as permanent Lecturer and drawing such remuneration from the University, he was elected as a Member of the Bihar Legislative Assembly on 08.06.1980 and continued as a Member till 12.03.1985 for full term of five years. In respect of the University service, he continued as a Lecturer and retired on 30.09.2002 from the University service which now was under the Magadh University. After 30.09.2002, he became entitled to the University pension as well.

4. Being a Member of the Bihar Legislative Assembly, he first became entitled to salary of a Member of the Assembly which he received in addition to his salary as a Lecturer from the University. Upon completing the full term as Member of the Legislative Assembly after 12.03.1985, he became entitled to pension from the Legislative Assembly and at the same time, was entitled to and receiving salary as a Lecturer as well. After 30.09.2002, when he retired from the University service, he was being paid pension both from the Legislative Assembly as well as the University.

5. The dispute arose when the writ petitioner wrote to the Legislative Assembly on 19.05.2006 demanding that he was in receipt of pension from the Assembly which pension had been revised in 1993, 1998, 2001 and 2003. Accordingly, benefits of the said revisions should be given to him. He further pointed out that the 1993



Amendment to the Bihar Legislature (Members' Salaries, Allowances and Pension) Act, 1960 (for short, "the Act") was prospective in its application as per judgment of this Court in the case of **Dr. Shiv Chandra Jha Vs. The State of Bihar & Ors.** (CWJC No. 3423 of 1992) and as such steps be taken to pay the same. The Accountant General then pointed out that in view of the 1993 Amendment, all amounts paid to the writ petitioner by way of pension from the Legislative Assembly would be liable to be refunded as 1993 Amendment made to clear that there would be no payment of double remuneration or double pension. This is what brought the writ petitioner to this Court. The learned Single Judge noticing the judgment of Division Bench of this Court dated 11.01.1994 in the case of **Dr. Shiv Chandra Jha** (supra) allowed the writ petition of the respondent.

6. We have heard the parties and perused the records. It seems that in our earlier order dated 09.02.2017, we had prima facie found substance in the submission of learned Senior Counsel for the Bihar Legislative Assembly, that the case of **Dr. Shiv Chandra Jha** (supra) was wrongly decided being *per in curium* having not taken note of the statutory Amendments. Having considered the matter at length, heard the parties and perused the Amendments, however, we are of the view that the decision of Division Bench in **Dr. Shiv Chandra Jha** (supra) is correct and requires no reconsideration. We may restate Statute law again.

7. In 1960, the State Legislature passed the Bihar



Legislature (Members' Salaries, Allowances and Pension) Act, 1960. The said Act and, in particular Section 10 thereof, provided clearly that notwithstanding anything contained in the Act, a Member, meaning thereby a Member of the Bihar Legislative Assembly, would draw his salary and allowances as a Member of the Legislative Assembly irrespective of any salary or pension to which he may be entitled elsewhere. To us, it is clearly providing for payment of remuneration from two sources. In so far as the writ petitioner is concerned, during the period he was a Member of the Legislative Assembly, he was also a Lecturer and as such he would be entitled under the aforesaid Act to remuneration both as a Lecturer from the University as also Legislator's salary from the Assembly. In the year 1977 with effect from 07.01.1977, the said Act was amended whereby Section 10(A) was introduced. Section 10(A) and, in particular, sub-sections (2) and (3) thereof, provided that if a person was in receipt of salary or pension from the Central Government or the State Government or any local authority or the Corporation and if he became entitled to salary and pension of a Member of the Legislature, he would virtually be entitled to only one set of remuneration being the higher of the two. This was a major departure from the original Act and restricted the rights of Legislators getting double remuneration. What is significant is that restriction was only in respect of remuneration received from the State Government, Central Government, Local Authority or the Corporation. Writ petitioner was a Lecturer in a University which is an autonomous



body created by the Bihar Universities Act, 1976. It is neither the State nor the Central Government and it is neither Local Authority nor Corporation of the State Government. Thus, when writ petitioner was elected as a Member of Legislative Assembly, 1980, he was not deprived of his salary as a Member of Legislative Assembly nor was his remuneration as a Lecturer curtailed. Everyone understood the law correctly and both continued to be paid. In 1993, it appears that the Legislatures realised that people, like the writ petitioner, were being benefited whereas others receiving second set of remuneration were deprived of it. Accordingly, in 1993, the said Act was amended and in Section 10(A) which had been introduced in 1977 to the Act, the expression "other authority or any person" was added. Therefore, now person receiving remuneration from the Central Government, or the State Government or Local Authority or Corporation of Central Government or State Government or any other authority or any person, all became excluded from his double remuneration and became entitled to higher of the two.

8. The question then arose whether this Amendment intended to take away the right of persons who are already drawing double remuneration. This question came up to be answered in the case of **Dr. Shiv Chandra Jha** (supra) whereby the Division Bench of this Court clearly held that this Amendment was prospective in nature meaning thereby that if people had already been drawing remuneration like salary or pension from two sources prior to this



amendment, their right would not be affected but the people who became entitled to double remuneration after this Amendment would be effected by the Amendment. Applying the aforesaid Amendment to the case of the writ petitioner in the present case, we have noted that the petitioner was in University service since 1976 and getting his remuneration as such upto 2002 when he superannuated from University service whereafter he became entitled to University pension. In the meantime, between 1980 and 1985 he became a Member of the Bihar Legislative Assembly, in that period in addition to remuneration from the University, he was entitled to full salary from the Assembly and after 1985, to pension of a Legislator. Thus, when the 1993 Amendment Act came into force, at that time he was already drawing University salary as a Teacher and pension as a past Member of the Legislative Assembly. In view of the judgment of this Court in the case of **Dr. Shiv Chandra Jha** (supra), he was to continue with both notwithstanding the 1993 Amendment.

9. Thus, if this be so, then we see no reason to interfere with the order of the learned Single Bench. The opinion of the Accountant General or the Secretary of the Legislative Assembly was clearly wrong.

10. What the writ petitioner had sought was that since he was receiving Legislative Assembly pension since 1985, subsequent revisions of such pension having been done, he was entitled to the revised pension from the time they were revised. It is with that prayer



that he had come to the writ Court. In our opinion, his demand was legal and justified. We would, therefore, not interfere in appeal as we are of the view that the learned Single Judge decided the case rightly.

11. Accordingly, we would set aside the order/opinion of the Accountant General and the Legislative Assembly and direct that as and when revision of pension was done by the Assembly in respect of the retired Legislators in the years 1993, 1998, 2001 and 2002 as also thereafter, the writ petitioner would get benefits of those revisions and would be entitled to the revised pension, if not already paid. The Legislative Assembly is directed to calculate the amount and ensure its payment to the writ petitioner within two months from today. The Letters Patent Appeal is, accordingly, disposed of.

(Navaniti Prasad Singh, J)

B.T/-

(Vikash Jain, J)

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