

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1299 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 9269 of 2010**

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Manbodh Ram, son of Late Sukhi Ram, R/o Shaileshpuri Chourharmal Nagar, P.O.
Anisabad, P.S. Phulwari, District Patna.

.... Petitioner - Appellant

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, New Secretariat, Patna,
3. The Director, Higher Education, Govt. of Bihar, New Secretariat, Patna,
4. The Finance Commissioner, Govt. of Bihar, Old Secretariat, Patna.

.... Respondents / Respondents

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Appearance:

For the Appellant/s : Mr. Bipin Bihari Singh, Advocate.

For the Respondent/s : Mr. Maruth Nath Roy, AC to SC 4.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 18-08-2017

Heard counsel for the appellant and counsel for the State.

2. The impugned order is dated 17.11.2014 passed by the learned Single Judge, who has dismissed the Writ Application of the present appellant refusing to give any direction or relief of extending a particular pay-scale to the appellant who was holding the post of Registrar of Babasaheb Bhimrao Ambedkar Bihar University at par with a Professor.

3. In terms of an advertisement, the appellant applied for



the post of Registrar. Since he fulfilled the requirements he got selected and appointed on the post of a Registrar on 22.11.1993 with a prescribed pay-scale. The pay-scale prescribed in the advertisement was Rs. 1900-2500/-. He continued to work in the capacity as a Registrar and superannuated on 31.01.2005. In the meantime, the appellant received the benefit of replacement of pay-scale in terms of the recommendation of the 4th Pay Revision Committee with effect from 01.01.1986. The replacement pay-scale was Rs. 3700-5000/-. That pay-scale was further revised with effect from 01.01.1996 to Rs. 12000-16500/-. This benefit of replacement scale was made available to the appellant with effect from 01.01.1996 and then he superannuated with that benefit and all his retiral dues were settled. The date of his superannuation is 31.01.2005.

4. After five years of his superannuation, the Human Resources Development Department, Government of Bihar issued Memo No. 871 dated 15.03.2010. Here, the pay-scale of Registrars of the Universities was re-fixed at Rs. 16400-22400/- but this was to be made available from the date of issuance of the said notification. This notification was to be prospective and for fresh appointments which were required to be made, if any, on the post of Registrar in the Universities, under the State of Bihar.

5. The appellant, eyeing the new pay-scale notified in the



year 2010, filed the Writ Application making an effort through the court of law to extend that benefit of the pay-scale by one interpretation or the other, obviously with the object that he can carry home a better pension than what he is begetting now.

6. The argument was considered in detail by the learned Single Judge. Neither the learned Single Judge could be convinced nor we are convinced as to how the 2010 Notification can be taken back to a period when the appellant can be made a beneficiary thereof. The Notification was unambiguous. Even the submission of the appellant before the learned Single Judge that the post of Registrar is equivalent to the Professor's post and, therefore, his pay-scale should have been at par with a Professor, as was notified by the UGC in its letter dated 25.07.1998, has also been considered by the learned Single Judge and held that the said notification (1) lays down certain qualifications and experience which are mandatory in nature and (2) that such notification has not been adopted or extended to the State of Bihar at the relevant time. Both these aspects being vital and the appellant having failed to fulfill the requirements, the same has come in his way.

7. The learned Single Judge, therefore, concluded in the following manner which are reproduced here-in-below:-

“9. It is settled law that fixation of pay scale is essentially an executive function and with effect from



which date a particular pay scale should be implemented is purely within the domain of employer. The High Court in exercise of power under Article 226 of the Constitution of India ordinarily does not interfere in such matters. As would be evident from the counter affidavit, the said scale of Rs. 16400 to 22400 has been allowed to persons holding the post of Registrar after enhancing the minimum qualification for the post with a clarification that those Registrars already working with the qualification as prescribed by the University Grants Commission, shall receive the said scale. The petitioner retired in the year 2005. It is not his claim that he fulfilled the criteria laid down by the University Grants Commission for the post of Registrar as on the date of his retirement. He has wrongly placed reliance upon Government of India letter dated 27.7.1998 to claim that scale of Rs. 16400 to 22400 should have been given to the petitioner as the said letter is confined to revision of pay scales of teachers in the Central Universities upon the recommendation of fifth Central Pay Commission.”

“10. In my opinion, giving higher scale of pay on the basis of educational qualification does not amount to any discrimination and it is well settled that the Government can create higher scale of pay with persons holding higher qualification. In the present case only such persons have been given the scale of Rs. 16400 to 22400 with effect from the date of notification of the State Government i.e. 15.3.2010 who either fulfilled the criteria as on the said date and were serving as Registrars or to be appointed on the basis of qualification prescribed by the University Grants Commission after 15.3.2010. Relying upon the Supreme Court decision in case of Gabriel Saver Fernandes and ors Vs. State of Karnataka & ors. reported in (1995) Suppl.(1) SCC 149, I am of the view that there is no unconstitutionality by making classification between qualified and unqualified person for given them different pay scale. Further, as I have noted above, the petitioner retired in January, 2005 itself. The pay scale of Rs. 16400 to 22400 has been decided to be given to the Registrar of the Universities by the State Government by the notification in question dated 15.3.2010 prospectively. There is no reason and there is



no basis on which the petitioner can claim that he should be given the said scale by applying the resolution retrospectively particularly when the Government of Bihar decided to grant scale of Rs. 12000 to 16500 with effect from 1.1.1996 by a resolution issued vide memo no. 1972 dated 12.10.2004 against which the petitioner did not raise any objection.”

8. The conclusion reached in terms of the above is based on correct interpretation of the facts as well as the law. Obviously, the Writ Application was filed by a retired person looking for a windfall, rather than for enforcement of a legal right or any kind of discrimination or foul play by the State authorities in not extending a pay-scale which was never applicable to the appellant while he was in service.

9. Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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