IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18197 of 2015

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Dr. Prabhakar Bhatt, Son of Late Jagdhari Rai, Resident of Mohalla- Yog Vidya Sambardhak Mandal, Boring Road, Police Station- Kotwali Patna, Dist.- Patna-1 Now Retired Professor of Zoology Patna Science College, Patna University, Patna (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Education Department Govt. of Bihar, Patna
2. The Vice Chancellor, Patna University, Patna (Bihar)
3. The Registrar, Patna University, Patna (Bihar)

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pursottam Kumar Jha, Advocate
		Mr. Anil Kumar Tiwary, Advocate
For the State	:	Mr. K.K. JHA- AAG-8
		Mr. K.C. Jha, AC to AAG-8
For the Patna University	:	Mrs. Nivedita Nirvikar, Advocate
		Ms. Sanjana, Advocate
		Mr. Prabhakar Sahay, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date : 20-12-2017

Heard parties.

This writ application has been filed by the petitioner for grant of following reliefs :

> (I) To direct and command the Respondents to make payment of post retiral benefit/dues with regard to leave Encashment remaining for 82 days to the petitioner which has not been paid earlier by the authority respondents, for which the petitioner is legally entitled in the interest of fair and natural justice.

(II) To direct the Respondents to provide the calculation chart with regard to payment of such leave Encashment to the petitioner who is legally entitled for the same. (III) To pass any other consequential order/direction as be deem fit and proper in the backdrop of the fact and circumstances of case and to which the petitioner may deem legally entitled to grant such reliefs.

However, on consideration of rival contention, in the opinion of this Court, *lis* is limited to the issue as to whether the petitioner is entitled for leave encahsment of 300 days or 218 days which has been calculated and payment has already been made to the petitioner by the Patna University.

It is stated on behalf of the petitioner that initially the date of superannuation of the petitioner was 31.01.2010, however, vide order dated 28.01.2010 passed by this Court in I.A. No.709/2010 in CWJC No.1115 of 2010 (Annexure-8), by way of interim measure, the petitioner was allowed on his post till the disposal of the writ application or till the date, he attains 65 years of age. On the basis of that, the petitioner continued to work till he attained 65 years of age on 31.01.2013. The aforesaid writ petition finally came to be disposed of vide Annexure-9 dated 25.02.2013 taking note of the fact that the petitioner has already attained the age of 65 years, therefore, no adjudication was required. However, it was also stated that entitlement of petitioner would depend upon decision of the Hon'ble Supreme Court in S.LP. © No. 18766-18782 of 2010. The said batch of Civil Appeal Nos. 5527-5543 of 2013 arising out of S.L.P. (C)No. 18766-18782/2010 was finally disposed of vide Annexure-13 appended with the rejoinder of the petitioner filed to the counter affidavit filed on behalf of the University. The concluding paragraph 67 would be relevant for the purpose of the petitioner where the Hon'ble Supreme Court has given a direction as under :-

> **"However, persons who have continued to work on the basis of the interim orders passed by this Court or any other Court, shall not be denied the benefit of service during the said period".**

Thus, it appears from the aforesaid decision that though the appeals and the petitions were dismissed granting liberty to the State Authorities and the Central Authorities to work out their remedies in accordance with law, however, the Hon'ble Supreme Court had made arrangement that the persons who had continued to work on the basis of interim orders passed by the Apex Court or any other Court, shall not be denied the benefit of service during the said period.

Thus, before me, the petitioner has been able to demonstrate that he admittedly having worked till January, 2013, in view of the aforesaid decision of the Apex Court and, as such, he was entitled for benefit of service for that period also.

Admitted position is that the Patna University has calculated his period for leave encashment only till January, 2010, which was his actual date of superannuation considering the age of superannuation to be 62 years of age.

Secondly, the Patna University in its counter affidavit filed on 30.08.2017 has taken a categorical stand in paragraph 14 thereof that the petitioner has wrongly calculated the period of earned leave from 1.07.2005 to 26.05.12006 counting it to be 189 days in place of maximum of 180 days and, according to the University, the same error in calculation has been made by the petitioner for the period commencing from 27.05.2006 to 29.06.2006 where 200 days was shown which could have been maximum of 180 days. Similar is the case for the period from 30.06.2006 to 14.09.2006. Accordingly, the calculation, according to the University, comes down to 218 days in total after deducting excess days shown by the petitioner.

However, in my opinion, this calculation is apparently erroneous in view of Annexure-F of the counter affidavit itself which is a notification of the State Government dated 24.09.2005. It clearly lays down that the University Teachers should be entitled for one day leave encashment to the maximum of 12 days in a year and for a maximum period of 300 days during his service and this decision was made effective from 27.07.1998. Therefore, in my view, the calculation done on the basis of grant of maximum of 180 days would be erroneous. It is also stated in the aforesaid notification (Annexure-F) that it would be subject to the condition that the concerned teacher must have worked 180 days in a year and 40 hours in a week, however, this condition was also applied from 30.07.2005 and it has been clarified that, for the period commencing from 27.07.1998 till 30.07.2005, this condition would not be applicable.

In such a situation, this Court would not have hesitation in holding that gross error has been committed by the Patna University in calculating the leave encashment period of the petitioner. As such, all the calculations done earlier stand quashed and set aside. The matter is remitted back to the Registrar, Patna University to get it calculated after consideration of Annexure-F and also considering the petitioner to have retired on 31.01.2013. Such calculation should be made within a period of three months from the date of receipt/production of a copy of this order and necessary payment should be made to the petitioner forthwith.

In the result, this writ application stands allowed.

(Dr. Ravi Ranjan, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	29.12.2017
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