IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22402 of 2013

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Dr. (Prof) Lakshmi Roy, son of Late Ajodhi Roy, Profession Retired Chairman, Bihar Public Service Commission, Resident of 48-Bhagwat Nagar, Naya Tola, Kumhrar, P.O. Bahadurpur Housing Colony, P.S. Agam Kuan, District- Patna-800026

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Governor of Bihar through his Principal Secretary, Raj Bhawan, Patna
3. Principal Secretary, Department of General Administration, Government of Bihar, Patna
4. Secretary, Department of Personnel & Administrative Reforms, Government of Bihar, Patna
5. Accountant General, Bihar, Patna
6. Bihar Public Service Commission through its Chairman
7. Sri A.K. Choudhary, the then Chief Secretary, Government of Bihar, Patna
8. Sri Amir Subhani, Principal Secretary of the Department of Personnel and Administrative, Reforms at the relevant time-now Principal Secretary, Home Department, Government of Bihar, Patna
9. Sri Krishna Kumar Sinha, Assistant of Section 7 of the Department of Personnel and Administrative Reforms at relevant Time (renamed now as Department of General Administration) during 2003-2009 and presently Section Officer, Department of Registration, Government of Bihar, Patna through the Principal Secretary, Department of General Administration
10. Sri Basudev Sharma, Section Officer of Section 7, Department of Personnel & Administrative Reforms (Now retired) through the Principal Secretary, Dept. of General Administration, Government of Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Dr. (Prof) Lakshmi Roy (in person)
For the Governor of Bihar: Mr. Rajendra Kumar Giri, Advocate
For the State : Mr. Parthsarthy, G. A. 4
Mr. Utsav Kumar, AC to GA-4

Mr. Kumar Vikram, AC to GA-4
For Accountant General : Mr. Arun Kumar Arun, Advocate
For the BPSC : Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT
Date: 09-10-2017

Heard the parties.

2. The instant writ petition has been filed for the following reliefs;-

(I) For quashing decisions/orders (i) dated 23.08.2005 (Annexure-19) (ii) dated 04.01.2007 (Annexure-21) and (iii) dated 20.08.2010 (Annexure-42) passed by the Secretary, Department of General Administration rejecting the claim of leave salary and lien contribution.

(II) For issuance of appropriate writ commanding the respondent nos. 1, 2, 3, 4 and 6 to pay the leave salary of 180 days as admissible under Regulation 6(3)(i) of the Bihar Public Service Commission (Conditions of Service) Regulations,1960 (for short 'the Regulation 1960').

(III) For issuance of appropriate writ commanding the respondent nos. 1, 2, 3 and 6 to pay retirement pension as admissible under

Regulation 12 of ‘the Regulation 1960’.

(IV) For issuance of appropriate writ commanding the respondent nos. 1, 2, 3 and 6 for payment of lien contribution towards various heads to the Indian Institute of Technology, Kharagpur against deputation on lien in lieu of utilizing the service of the petitioner by the Bihar Public Service Commission (for short ‘BPSC’).

(V) For issuance of appropriate writ commanding the respondent nos. 1, 2, 3 and 6 to pay the interest at the rate of 12 % compounded annually on the admissible leave salary, contribution towards various heads against arrear salary and arrear pension with effect from 25.01.2003.

(VI) For commanding respondent nos. 1, 2, 3 and 6 to revise pension pursuant to 6th pay revision as they have already revised the pay from Rs.26,000/- to Rs.80,000/- vide notification No.7/PSC-7-06/05-P-7400 dated 29.07.2009.

(VII) For issuance of appropriate writ commanding respondent nos. 1, 2, and 3 to change the effective date of correction notified vide order no. 7/PSC-7-06/05 P-9653 dated 03.09.2008 from 03.09.2008 to 01.04.1997 and consequent to the aforesaid change, pay the arrear salary arising out of correction of the pay from Rs.24,500/- per month to Rs.26,000/- per month from the period between 01.04.1997 and 24.01.2003.

(VIII) For issuance of appropriate writ commanding respondent nos. 8, 9 and 10 to pay litigation cost.

3. Be it noted that so far as the grievance of the petitioner in respect of leave salary of 180 days is concerned, it is admitted by the petitioner that the same has already been paid during pendency of the writ petition, and thus stands redressed.

4. In brief, the case of the petitioner is that he started his career in IIT Kharagpur in 1966 as Lecturer of Electrical Engineering. Consequently, he was selected for the positions of Senior Lecturer, Assistant Professor, Associate Professor and Professor. In 1992, he was appointed the Dean of the IIT Kharagpur. Subsequently, he was appointed on deputation Principal of the Regional Institute of Technology (RIT), Jamshedpur for three years, where he joined on 06.07.1995. He was granted lien by

the IIT Kharagpur from 06.07.1995 to 05.07.1998. While the petitioner was with RIT, Jamshedpur, he was called by the office of the Hon'ble Governor of Bihar pursuant to which he appeared before the Secretary to the Hon'ble Governor and was handed over office order dated 24.01.1997 appointing him the Chairman of the BPSC under Article 316 of the Constitution of India. He was directed by the Hon'ble Governor to join the post immediately due to the chaotic conditions prevailing in the BPSC where every member was claiming to be acting Chairman and issuing orders in that capacity. Under such a peculiar situation, he joined the BPSC on 25.01.1997 and started functioning. He could not go to RIT, Jamshedpur to hand over the charge personally. He did so telephonically. He handed over the letter of resignation from the post of Principal to the Chairman, Board of Governors of RIT, Jamshedpur, who resided in Patna. His service was made available by his present employer IIT, Kharagpur to the BPSC on the same terms as it was at RIT, Jamshedpur and the Registrar of the IIT Kharagpur communicated to the BPSC vide office order dated 01.07.1997 that the competent authority in special case did approve the change in the place of duty and designation of the petitioner as Chairman, BPSC from 25.01.1997, till the expiry of the period of deputation on lien on 05.07.1998 subject to the following conditions :-

(a) Leave salary contribution @ 11% of pay to be drawn by Dr. Roy in the Bihar Public Service Commission (i.e. Rs.836/- per month on Rs.7600/- for the present).

(b) Pension contribution @ 23% of the maximum pay of the post in the officiating/substantive grade held by Dr. Roy at the time of proceeding on Foreign Service in addition to his own subscription to the PF account (i.e. Rs.3000/- per month).

(c) Own contribution to the PF A/c. (i.e. Rs.3000/- per month).

5. The further case of the petitioner is that the lien, which was initially granted by the IIT Kharagpur upto 05.07.1998 was later on extended upto 05.07.2000 vide office order dated 24.09.1998 by the IIT Kharagpur. As the lien of the petitioner was going to expire on 05.07.2000, he had sent a notice to the competent authority of the IIT Kharagpur for voluntary retirement from service of the Institute with effect from 05.07.2000, which was accepted and, thus, the petitioner retired voluntarily from the

service of the IIT Kharagpur with effect from 05.07.2000.

6. It is the case of the petitioner that while he was functioning as the Chairman, BPSC, he was arrested by the C.B.I. in R.C. Case No. 43(A) of 1997 for which an FIR was lodged on 11.08.1997. He was not named as an accused in the FIR. He was arrested by the C.B.I., Patna, on 11.11.2000, i.e., three years ten months after assumption of his office in a case which was not connected in any manner with the functioning as the Chairman, BPSC. He was released on bail from judicial custody on 12.02.2001. He resumed his duty on 13.02.2001 and continued till 24.01.2003 to complete the term of six years of his appointment. He filed Cr.Misc. No. 33510 of 2001 before this Court for quashing the order taking cognizance passed against him in R.C. Case No. 43(A) of 1997 corresponding to Special Case No. 23 of 1997, which was allowed vide order dated 06.09.2002 and in the light of the order, the proceeding against the petitioner in the said criminal case was dropped by the learned Special Judge, C.B.I., North Bihar, Patna.

7. The grievances of the petitioner in the writ petition are that -

(i) Though he was entitled to full pension, he has been sanctioned and paid only 5/6th of the full pension;

(ii) He has not been paid pension at the appropriate rate on implementation of 6th pay revision recommendations, which was made effective from 01.04.2007 on parity basis;

(iii) Pursuant to the implementation of 5th pay revision the pay of the Chairman was wrongly fixed at Rs.24,500/- with effect from 01.04.1997, which should have been fixed at Rs.26,000/-. The error was subsequently removed and corrected pay of Rs.26,000/- was notified vide notification dated 03.09.2008/18.11.2008, but in the notification instead of making the corrected pay of Rs.26,000/- payable retrospectively with effect from 01.04.1997, it was made payable prospectively with effect from the date of notification;

(iv) On taking voluntary retirement from IIT Kharagpur with effect from 05.07.2000, Rs.03,20,627/- was recovered from his pension towards pension contribution, which was payable by the BPSC, but could not be paid due to inaction on the part of the General Administration Department, which was required to obtain formal approval from the Hon'ble Governor;

(v) He was entitled to receive leave salary within a month of his retirement, which was paid only after filing of the writ petition vide authority issued on 06.07.2015. Thus, what was due in February, 2003 was paid after 12 years in July, 2015, but no interest on the arrear of leave salary has been paid to him;

(vi) He was entitled to receive pension from the date of retirement, but the same was sanctioned by the State Government and authority letter was issued by the Accountant General, Bihar on 30.12.2014 after filing of the writ petition on 08.10.2013. However, no interest was paid on the arrear pension;

(vii) He is entitled to payment of litigation cost as he has been forced to seek legal remedies for redressal of his grievance for no fault on his part at the evening of his career.

8. Per contra, the stand of the State in its various counter affidavits filed in this case, in brief, is that Regulation 9(2) of ‘the Regulations 1960’ deals with the term “service for pension” and it includes “actual service”. The term “actual service” is explained in Regulation 9(1) and it includes the time “spent on duty”. As the petitioner remained in judicial custody for more than three moths, i.e. 94 days from 11.11.2000 to 12.02.2001, the same cannot be said to be the period of service “spent on duty” and, thus, would not come within the definition of “actual service” and consequently cannot be counted as “service for pension”, as defined under Regulation 9(2) of ‘the Regulation 1960’. Regulation 12(2) of ‘the Regulation, 1960’ states that if a member has completed 3 years, 4 years or 5 years “service for pension”, he would be paid 3/6, 4/6 or 5/6 respectively of the full pension. Hence, the petitioner having completed 5 years service for pension was sanctioned 5/6 of full pension. It is further stated that sub-regulation (iv) of Regulation 9(2) states that any period not exceeding three months which, under the orders of the Governor, may, for special reasons, be added to the service for pension of a member. Thus, even on application of the above Regulation 9(2)(iv), the petitioner would still not complete six years. Thus, for the completed 5 years the petitioner has rightly been sanctioned 5/6 of full pension.

9. In respect of revision of pension, the stand of the State is that Central and State Governments enhanced pay of their employees by fixing salary in the light of recommendation of pay commission, but this procedure is not adopted for Chairman or Member of BPSC. Under Regulation 12 of 'the Regulation 1960', there is no provision for revising the pay and in past the pay of the Chairman and Members of the BPSC have been revised from time to time by amendment in the Regulations. Thus, the notification dated 03.09.2008/18.11.2008 being prospective in nature would be effective from the date of issuance of notification. Hence, the prayer of the petitioner to make the notification dated 03.09.2008/18.11.2008 to be effective with effect from 01.04.1997 has been rightly rejected.

10. In respect of the pension contribution while on deputation with lien, the stand of the State is that the petitioner had joined on the post of Chairman himself after appointment by the Hon'ble Governor. In the circumstances, the period rendered by him as the Chairman of the BPSC was not treated by the Government as Foreign Service and, hence, the payment of pension contribution was not made as per advice of the Finance Department. Further, the petitioner has availed pension from the IIT Kharagpur and joined the post of Chairman, BPSC and,

therefore, for the service rendered by him as the Chairman, BPSC, payment of his pension and leave encashment has been sanctioned by the State also. Hence, the amount of Rs.3,20,627/-, which has been deducted by the IIT Kharagpur has not been paid by the State in the light of the advice of the Finance Department. It is also the stand of the State that the petitioner is not entitled for full pension as well as pension contribution from the State in view of notification no.9700 dated 06.07.2015 issued by the State against Regulation 4(kha) of 'the Regulation 1960'.

11. In respect of payment of interest for the delayed payment of retiral dues, the stand of the State in its counter affidavit is that the petitioner was himself involved in litigation and in the said litigation the petitioner was apprehended and sent to judicial custody. Thus, it was but natural that the calculation and payment of retiral dues of such a person could not be done smoothly. Hence, the petitioner is not entitled to make any claim for payment of interest for the delayed payment of retiral dues or payment of cost of litigation.

12. Though the petitioner is being represented through lawyer, at his request, he has been permitted to argue the case himself.

13. In his submission, the petitioner contended that he was

never suspended even during judicial custody from 11.11.2000 to 12.02.2001 and so he remained the Chairman even during the custody period. His contention is that since no break in service was ordered, his service remained continuous and, thus, he completed full term of six years as Chairman. Hence, he is entitled to full pension. He contended that different terms and conditions apply to the service and non-service members in respect of leave, leave salary, pension and continuity of their previous service. Regulations 2(e), 2(f), 2(g), 4A, 5A, 13 and 14 of 'the Regulation 1960' are applicable to only service members whereas Regulations 4, 7 and 15 of the aforesaid Regulation are applicable to both service and non-service members. However, Regulations 6 and 12 of the aforesaid Regulation are applicable to only non-service members. He contended that the pension to non-service members is revised by the Governor on the recommendation of the Council of Ministers under Article 163 of the Constitution of India. The same is revised to non-service members as and when the State Government revises pension to service members of the BPSC. He submitted that the revision made pursuant to 3rd, 4th and 5th pay revision, pension of the service as well as non-service retired members were revised by the BPSC. However, for no justifiable reason, the revision of pension was not done pursuant to the 6th pay revision although pay was revised. He contended that the pension of the retired BPSC Members, who belong to Government service, was revised by the Government, but revision only for a few non-service retired members coming from services, other than the Government service, has not been done. He contended that pursuant to the implementation of the 6th pay revision with effect from 01.04.2007, he is entitled to revision of pension on parity basis. He contended that the Registrar, IIT Kharagpur vide letter dated 14.02.2007 informed the Chief Secretary, Government of Bihar that an amount of Rs.3,20,627/- was due from the BPSC towards the lien contribution allowing the petitioner to serve it and the same has been recovered from his retirement benefits due to non-receipt of the same from the BPSC. The Chief Secretary was requested by the Registrar to pay the above amount directly to the petitioner. His contention is that the Chief Secretary placed the file before the Hon'ble Governor and obtained the approval for payment of the lien contribution. The approval of the Hon'ble Governor was notified vide notification dated 03.09.2008/18.11.2008, but till date, the payment of pension contribution has not been made to him. He contended that the amended Regulation 2015 notified on 06.07.2015 cannot be applied retrospectively as it is unfair, unjustified, invalid illegal and unconstitutional. He contended that since there is long delay in payment of retiral dues to him for no fault on his part, he is entitled for interest on delayed payment. The plea of the petitioner is that though he retired on 24.01.2003, the payment of $5/6^{th}$ of full pension was approved by the Government after filing of the writ petition and the Accountant General, Bihar issued authority on 30.12.2014 pursuant to which SBI calculated arrear of pension and Rs.4,80,000/- was paid to him. However, no interest was paid on arrear of pension. He has also pleaded that only after filing of this writ petition, the Government approved the leave salary and informed the Accountant General Bihar vide letter no. 26.11.2014 to issue authority letter whereafter authority letter dated 06.07.2015 was issued directing the bank to make payment pursuant to which the Bank paid Rs.1,62,720/- towards the leave salary. He pleaded that what was due in February, 2003 was paid in July, 2015.

14. *Per contra*, Mr. Parth Sarthi, learned counsel appearing for the State submitted that regarding the claim raised by the petitioner in the writ petition, the concerned file was endorsed to the Finance Department for its consent and advice. After the detailed examination of the file the Finance Department rejected the claim of the petitioner for pension contribution, prayer for revised pension and the request to amend or revise the effective date of

notification no.9653 dated 03.09.2008/18.11.2008. He submitted that in the matter of proportionate pension of the petitioner as 5/6 of his full pension, the fact is that as per the provision of 'the Regulation 1960', the Members either in the service of the Central Government or the State Government are not entitled to receive pension for the services rendered by them in the Commission. However, the aforesaid period of service in the Commission is to be reckoned for the purpose of pension and other retiral benefits under the provisions made by the Government. However, the Members of the Commission, who come from the foreign services such as University, become entitled to receive pension and leave encashment from their University. The provision of payment of pension is prescribed under 'the Regulation 1960' to only those Members of the Commission, who were neither in the State nor in the Central Government services at the time of their appointment. He contended that since the petitioner was an employee of the IIT Kharagpur, which is an autonomous institution, he was treated as an independent Member of the Commission being appointed as Chairman of the BPSC and was granted pension and leave encashment for his services rendered in the BPSC. His contention is that since the period of service of the petitioner as Chairman of the BPSC was not found complete six years, as admittedly the petitioner had remained in judicial custody from 11.11.2000 to 12.02.2001 i.e. for 94 days and, hence, in the light of regulation 12(2) of 'the Regulation 1960' for the completed period of five years service, 5/6 as proportionate pension has been sanctioned in his favour.

15. He contended that as per regulation 12 of 'the Regulation 1960' the provision has been made thereunder that the pension of the Members of BPSC has to be fixed, who were not in service of either the Union Government or the State Government. The Central Government or the State Government enhances the pay of their employees in the light of the recommendation of the pay commission, but this procedure is not adopted for the Chairman and Members of the BPSC. Under regulation 12 of 'the Regulation 1960', there is no provision to revise pay of the Chairman or Members of the BPSC like the employees of the Central Government or the State Government. However, he concedes that it is a fact that the fixed pay of the Chairman or the Members of the BPSC has been revised from time to time in past.

16. He has contended that the prayer of the petitioner to revise his pay with effect from 01.04.1997 has been rejected on the ground that vide notification no. 7293 dated 15.09.2000 under regulation 4 of 'the Regulation 1960', the existing pay of the

Chairman of Rs.7,600/- had been enhanced to Rs.24,500/- per month and pay of Members had been enhanced from Rs.6,700/- to 22,400/- per month. The aforesaid notification came into force from the date of publication of the notification and, again, vide notification no. 9653 dated 03.09.2008/18.11.2008 under regulation 4 of 'the Regulation 1960', the pay of the Chairman had been enhanced to Rs.26,000/- from Rs.24,500/- and the pay of the Members had been enhanced from Rs.24,500/- to Rs.22,400/-. He contended that this notification was also made effective from the date of issuance of the notification i.e. 03.09.2008/18.11.2008 and as the petitioner had retired much earlier from the date of the said notification, he was not entitled for the amended pay of the Chairman. He further contended that not only the period of the petitioner as Chairman of the BPSC was found chequered and full of litigation, pension papers were submitted by him belatedly in the year 2009. As a result of the above litigations, the retiral benefits were not granted in time and, hence, the claim of the petitioner for payment of interest is neither logical nor justified. He contended that the petitioner is not entitled to interest because of the fact that the Government is not responsible for delay in payment of retiral benefits to the petitioner. He contended that for the delay in payment of retiral benefits the circumstances and the petitioner himself were responsible. He contended that though the petitioner retired on 24.01.2003, the pension papers were submitted by the petitioner belatedly in the year 2009.

17. Mr. Sanjay Pandey, learned Advocate appearing for the BPSC submitted that the BPSC is a formal party, as the grievances made by the petitioner in the writ petition, relate to the respondent State and it is for the State to contest the case on merits.

18. So far as the respondent Accountant General is concerned, Mr. Arun Kumar Arun, learned Advocate submitted that the matter of salary and pension are related to the Government of Bihar and there is nothing pending to be authorized to the petitioner by the office of the Accountant General. He contended that the Accountant General is a formal party in the matter.

19. I have heard learned counsel for the parties at length and carefully perused the record.

20. The petitioner herein was appointed as the Chairman of BPSC in exercise of power conferred by Article 316 of the Constitution of India by the Governor of the State of Bihar. On joining duty, the conditions of services of the petitioner were governed by 'the Regulation, 1960' which were framed by the Governor of Bihar in exercise of powers conferred under Article 318 of the Constitution of India. Regulation 2(c)(d)(e)(f) and (g)

define the term 'Governor', 'Member', 'Service Member', 'Parent Service' and 'Service Pension' respectively. Regulation 4 empowers the Governor to fix salary of the Chairman and the Members. Regulation 4A is a deeming provision whereby Chairman or Member, who was in the Government service on the date of joining the Commission, is deemed to have been retired from the Government service. Regulation 6(1) and (2) deals with right to receive leave salary and to draw the service pension under the proviso to Regulation 4. Regulation 9 to 15 deals with pension of a Member of BPSC. Regulation 9(1) defines the term 'actual service' and Regulation 9(2) defines the term 'service for pension'. Regulation 12(1)(i) and 12(1)(ii) provides for the pension payable by the Commission to a Member, who was not in Central or State Government on the date of joining the Commission. Regulation 13 provides for pension and retirement benefits payable to a member who at the time his appointment was in the service of Central Government or State Government. Regulation 15 prescribes for the authority competent to grant pension to a Member shall be the Governor.

21. I must first set out the aforesaid regulations of 'the Regulation, 1960', which read as under :-

> "2. (c) "Governor" means the Governor of Bihar;

(d) "Member" means a Member of the Commission and includes the Chairman;

(e) "Service Member" means a person, who, before his appointment as Member, was in the service of the Government of India or of a State in India (irrespective of whether he joins as Member before or after his retirement from such service);

(f) "Parent Service" means, in relation to a service Member, the service under the Government in which he was employed before his appointment as such Member; and

(g) "Service Pension" means, the pension granted to a Service Member, under the rules of the Parent Service and signifies the gross amount of such pension prior to commutation, and includes the pension equivalent of service gratuity.

4. The Chairman may receive a pay of Rs.3,000 a month and each of the other Members may receive a pay of Rs.2,750 a month:

Provided that if at the time of appointment as Chairman or Member, the Chairman or the Member was in receipt of or had become entitled to receive retirement benefits by way of pension, gratuity, contributory Provident Fund or otherwise, the pay specified in the regulation shall be reduced by the gross amount of pension (including any portion of the pension which may have been commuted) and the pension equivalent of other forms of retirement benefits, if any.

4A. A Chairman or Member who, on the date of his appointment to the Commission, was in the service of the Central or State Government shall be deemed to have retired from such service with effect from the date of his appointments as Chairman or Member of the Commission.

6. (1) A Member, who at the date of his appointment, was not in the service of the Government of India or of a State in India, may be granted leave as follows:-

(a) Leave on leave salary equivalent to average pay up to 1/11th of the period spent on duty as a Member, subject to a maximum of four months at any one time;

(b) Leave on medical certificate on leave salary equivalent to half the pay admissible on earned leave, subject to a maximum of three months at any one time;

(c) Extraordinary leave without allowance, subject to a maximum of three months at any one time.

Explanation- All or any two of those kinds of leave may be granted in a combination at one time.

(2) A Member may, in addition to any leave salary he may be entitled to under clause (1), draw the service pension under the proviso to Regulation 4.

9. In this section, unless the context otherwise requires :-

(1) "actual service" includes:-

(i) time spent on duty as a Member of the Bihar Public Service Commission;

(ii) time spent on duty by a Member referred to in sub-clause (i) in the performance of such other functions as he may, at the request of the Governor, undertake to discharge, and

(iii) joining time on transfer to the office of Member from a post or an office under the Union or a State.

(2) "service for pension" includes-

(i) actual service,

(ii) one month or the amount actually taken, whichever is less, of each period of leave on full allowance;

(iii) joining time on return from leave outside India; and

(iv) any period not exceeding three months which, under the orders of the Governor, may, for special persons, be added to the service for pensions of a Member;

3. "Pay" including, where the pay drawn by a Member during his tenure of office was varied on account of any charge in the rate of pay, deputation, leave, promotion from the office of Member to the office of Chairman or any other reason, the average monthly salary for the full terms for which the Member has hold office.

Explanation- The expression "Full term" in this clause means any period not extending six years preceding the date on which the Member has vacated office.

10. Subject to the provisions of these regulations a pension shall be payable to a Member on ceasing to hold office, only if he has completed not less than three years, service for pension. No pension shall be payable to a Member on his removal from office but in case a Member, who has completed three years service or mere for pension , resigns from his office, and such resignation is accepted by the Governor, the pension admissible under these regulations shall be payable.

11. Pension under these regulations shall be payable to a Member, for life, subject to the condition that the pension shall be held in abeyance for any period during which he may subsequently be appointed to hold the office of a Member of the Union Public Service

Commission or of a Member of Public Service Commission of another State:

Provided that the provisions of this regulation shall not apply to a Member who is, or becomes, qualifed to receive a service pension, irrespective of whether he actually draws the service pension or the higher pension admissible under the proviso to Regulation 13.

12. (1) In the case of a Member who on the date of appointment was not in the service of the Union or a State, the pension to which such Member will be entitled shall-

(i) in the case of a Chairman, if he has completed six years service for pension and has drawn pay at the rate of Rs.2,500 a month, be Rs.5,75 per annum; and

(ii) in the case a Member, other than the Chairman, if he has completed six years, service for pension and has draws pay at the rate of Rs.2,250* a month, be Rs.4,500* per annum.

(2) If a member has completed three years, four years or five years service for pension, be three – sixths four - sixths or five-sixths respectively, of the full pension which would be payable to him, as the case may be, in accordance with clause (1).

(3) Where the pay determined under clause (3) of regulation in respect of a period of six years of

service for pension of Member is less than the pay specified in relation to such period in sub clause (i) or (ii) of clause (1), the amount of pension admissible per annum shall be the amount arrived at by multiplying the average monthly pay determined under clause (3) of regulation 9 with the amount of pension to which the Member would be entitled if his full, and not average, monthly, pay had been taken into account, and the product then being divided by the full pay mentioned in sub-clause (i) or (ii) of clause (1), as the case may be.

(4) In case specified in clause (2) if the average monthly pay determined under clause (3) of regulation 9 is less than the full pay to be taken into account for purpose of the clause, the pension admissible shall be the relative proportion in each case, specified in the said clause, of the amount of pension arrived at in accordance with clause (3).

13. (1) A Member who at the time of his appointment as such, was in the service of the Central or a State Government shall, at his option to be exercised within a period of six months from the date of his appointment be entitled to draw his pension and other retirement benefits under the rules applicable to the service to which he belonged with effect from the date of his appointment as Member;

Provided that, in such an event, his pay as Member shall be reduced by an amount equivalent to the gross pension (including any portion of the pension which may have been commuted) and the pension equivalent to other retirement benefits and he shall be entitled to draw pension and other retirement benefits separately.

(2) A Member, who at the time of his appointment as such, was in service of Central or a State Government and does not exercise the option mentioned in sub-regulation (i), shall count his service as Member for pension and retirement benefits under the rules applicable to the service to which he belonged immediately before such appointment."

14. The pension payable under regulation 12 shall not be commuted but the pension under regulation 13 may be commuted.

15. The authority competent to grant a pension to member shall be the Governor."

22. Before proceeding further, it would be relevant to note here that in exercise of powers conferred by Article 318 of the Constitution, 'the Governor' has made amendments in 'the Regulation, 1960'.

23. Vide Notification dated 12.02.1988 in Regulation 4 in place of figure and words "Rs.3000/- (three thousand)", figure and

words “Rs.7600/- (seven thousand six hundred)” and in place of figure and words “Rs.2750/-(two thousand seven hundred fifty)”, figure and words “Rs.6700/- (six thousand seven hundred)” was substituted with effect from 1st January, 1988.

24. Similarly, vide Notification dated 14.06.2000, in place of figure and words “Rs.7600/- (seven thousand six hundred)”, figure and words “Rs.24,500/- (twenty four thousand five hundred)” and in place of figure and words “Rs.6700/- (six thousand seven hundred)”, figure and words “Rs.22,400/- (twenty two thousand four hundred)” was substituted with effect from 1st April, 1997. Again, the Governor of Bihar, in exercise of power conferred by Article 318 of the Constitution, amended the Regulation 4, vide Notification dated 03.09.2008/18.11.2008 whereby in place of figure and words “Rs.24,500/- (twenty four thousand five hundred only)”, figure and words “Rs.26,000/- (twenty six thousand)” and in place of figure and words “Rs.22,400/- (twenty two thousand four hundred)”, figure and words “Rs.24,500/- (twenty four thousand five hundred only)” was substituted with effect from the date of notification.

25. At this stage, it would be pertinent to note that Article 316 of the Constitution fixes the tenure of the Chairman and the Members of Public Service Commission. It prescribes that a

member of a Public Service Commission who holds office for a term of six years from the date he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission, the age of 62 years, whichever is earlier subject to resignation or removal as provided in the Constitution. Clause (3) of Article 316 disqualifies a member who holds office as a Member of Public Service Commission for reappointment to that office.

26. Article 319 of the Constitution prohibits further employment of Chairman and Members of Public Service Commission after expiry of their term of office to the same office under the same Commission and for any employment under the Government of India or State Government except as the Chairperson or Member of the Union Public Service Commission or as the Chairperson of any other State Public Service Commission.

27. Article 317 of the Constitution provides that a Chairperson or a Member of Public Service Commission may be removed on the ground of misbehavior only after a reference is made to the Supreme Court and on the recommendation of the Supreme Court. Under clause (3) of Article 317, the President may, notwithstanding anything in clause (1), remove from office the

Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,-

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office, or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

28. Article 318 of the Constitution authorizes the President, in the case of the Union Commission or a joint Commission and the Governor, in the case of State Commission, to determine by Regulation, the conditions of service of the members and staffs of the Commission, the proviso to Article 318 mandates that the conditions of service of a Member of Public Service Commission shall not be varied to his disadvantage after his appointment.

29. There is no concept of suspension of Chairman of a Public Service Commission in the Constitution. He has a constitutional status.

30. Having noticed the facts of the case, rival submissions made on behalf of the parties, the relevant regulations of 'the Regulation, 1960' and the relevant Articles of the Constitution of

India, let me examine now, the admissibility of the claims of the petitioner. There is no dispute to the fact that the petitioner was appointed Chairman of BPSC for six years by the Governor under Article 316 of the Constitution. He joined the post on 25.01.1997 and, after completing the term of six years, retired on 24.01.2003. The State Government has opposed the claim of the petitioner for payment of full pension relying upon Regulations 9(1) and 9(2) and 12(2) of 'the Regulation, 1960'. The State has contended that the petitioner has not completed actual six years of service as Chairman and so, he is not entitled to full pension. The stand of the State is based on the premise that the petitioner was in judicial custody from 11.11.2000 to 12.02.2001 in connection with a criminal case and thus, the said period cannot be treated as the service rendered in the capacity of Chairman.

31. There is no dispute to the fact that the case in which the petitioner was remanded to judicial custody was not connected in any manner with the affairs of the Commission. There is also no dispute to the fact that the cognizance of the case in which the petitioner was remanded, was quashed by this Court in exercise of powers conferred under Section 482 of the Code of Criminal Procedure and the criminal proceeding against him was dropped by the Special Judge, CBI. Thus, in effect, it would be deemed that

there was no criminal case against the petitioner. Even during the period of judicial custody for 94 days, the petitioner continued to be Chairman. No proceeding for his removal, as provided in the Constitution under Article 316, was ever initiated against him, in terms of Article 317 of the Constitution. No reference was made in this regard to the Supreme Court and the Supreme Court never recommended for his removal. He was neither adjudged as insolvent nor engaged himself during term of office in any paid employment outside the duty of his office nor the Hon'ble President ever opined that he was unfit to continue in the office by reason of infirmity of mind or body.

32. The Chairman of the BPSC does not hold a post in connection with the affairs of the Union or the State. He is not a Government servant. There is no master servant relationship between the State and the Chairperson.

33. In reference under Article 317 (1) of the Constitution of India, **in Re; [(1990) 4 SCC 262]**, it was held :

> "The case of a government servant is, subject to the special provisions, governed by the law of master and servant, but the position in the case of a Member of the Commission is different. The latter holds a constitutional post and is government by the special provisions dealing with different aspects of his office as envisaged

> by the Articles 315 to 323 of Chapter II of Part XIV of the Constitution."

34. In **Ram Kumar Kashyap & Anr. vs. Union of India & Anr. [(2009) 9 SCC 378],** the Supreme Court held :

> "…since the Public Service Commissions are a constitutional creation, the principles of service law that are ordinarily applicable in instances of dismissals of government employees cannot be extended to the proceedings for the removal and suspension of the members of the said Commissions."

35. Having regard to the facts noted above, I am of the considered opinion that denial of full pension to the petitioner, who has suffered due to an illegal arrest by the CBI, would amount to punishment and for none of his fault. The absence of the petitioner from working place was under the circumstances beyond his control. The said period has to be treated as time spent on duty as Chairman of BPSC and would qualify for pension. The Regulation 9(1), 9(2) and 12(2) of 'the Regulation, 1960' cannot be interpreted in any manner to the disadvantage of the petitioner for denying him full pension.

36. So far as the claim of payment of pension contribution is concerned, there is nothing in 'the Regulation, 1960' which

would make the petitioner entitled to for both the pension as well as pension contribution to the parent department from the State. It is true that vide notification dated 03.09.2008/18.11.2008 issued in exercise of powers conferred by Article 318 of the Constitution, as contained in Annexure-17 to the present application, the Governor took a decision that in case of a member coming from the university service, it is necessary to send lien contribution to the university. However, said notification was made effective from the date of its issuance. Admittedly, the petitioner superannuated on 24.01.2003. Thus, a decision which was taken more than five years after his retirement and was made effective from the date of its notification could not enure any benefit to the petitioner. The petitioner has submitted that he is entitled to receive lien contribution vide notification dated 03.09.2008, as an amount of Rs.3,20,627/- under this head was deducted by the IIT, Kharagpur from his retiral benefit with intimation to the Chief Secretary with a request to reimburse the amount to the petitioner.

37. In my considered opinion, such a plea cannot be accepted for more than one reason. The first being the fact that the petitioner being the employee of the autonomous institution was granted pension and leave encashment for his services given to the BPSC and the second being the fact that the statutory notification

dated 03.09.2008/18.11.2008 issued in exercise of powers conferred under Article 318 of the Constitution by the Governor, has come into force with effect from the date of notification, i.e. more than five years after the superannuation of the petitioner. The said notification has become part of 'the Regulation, 1960'. It is statutory in the nature.

38. Where the words of a statutory notification are free of ambiguity and express plainly, clearly and distinctly the legislative intent, there is no reason as to why this Court should interpret it differently.

39. The claim of the petitioner for revision of salary is based on the pleading that pursuant to the implementation of the fifth pay revision, the pay of the Chairman was wrongly fixed at Rs.24,500/- with effect from 01.04.1999 which should have been fixed at Rs.26,000/- and the said error was subsequently removed vide notification dated 03.09.2008/18.11.2008. But in the notification instead of making the corrected pay of Rs.26,000/- payable retrospectively with effect from 01.04.1997, it was made payable prospectively with effect from the date of notification.

40. I do not find any merit in the claim of the petitioner for payment of arrears of salary on the same ground on which this Court has not found any merit in the claim of the petitioner for lien

contribution, It is reiterated that the rules framed under 'the Regulation, 1960' are statutory in nature. The amendments to these regulations from time to time have also been made in exercise of powers conferred by Article 318 of the Constitution and, thus, they are also statutory in the nature, having force of law.

41. The validity of the aforesaid notification dated 03.09.2008/18.11.2008 whereby amendment was made substituting the digit and words 'Rs.24,500/- (twenty four thousand five hundred)' to 'Rs.26,000/- (twenty six thousand)' and the decision to pay lien contribution to the university in case of members coming from the University service came into force with effect from 18.11.2008, was not challenged by the petitioner in the original writ petition. Subsequently, vide interlocutory application, the petitioner has prayed for additional relief for quashing the first part of notification dated 03.09.2008/18.11.2008 and to direct to issue a fresh notification giving benefits of corrected pay and dearness allowance thereon arising out of removal of error in the pay paid from 01.04.1997 to Chairman and Members of the Commission with effect from 01.04.1997. Even by way of interlocutory application, the constitutionality or the vires of the notification has not been challenged. Till the statutory rule is valid, this Court in its power under Article 226 of the Constitution of

India cannot direct for shifting payable date of the amended salary from the date of issuance of notification to 01.04.1997.

42. Even otherwise, in view of the standing order no. 3 of 1994 as contained in Chapter XXI-C of the Patna High Court Rules validity of statutes can only be challenged before a Division Bench.

43. So far as the claim of the petitioner that pursuant to 6th pay revision with effect from 01.04.2007, he is entitled to revision of pension on parity basis is concerned, as per Regulation 12 of 'the Regulation, 1960', a provision has been made that pension of the members of the BPSC has to be fixed, who were not in service of either Union Government or State Government. The Central Government or the State Government enhanced the pay of their employees by fixing their salary in the light of recommendation of pay commission, but this procedure is not provided for Chairman or Members of the BPSC. Even, under Regulation 10 of 'the Regulation, 1960', there is no provision to revise the pay of the Chairman or Members of the BPSC like the employees of the Central Government or the State Government. Simply because of the fact that the fixed pay of the Chairman or the Members of the BPSC has been revised from time to time, this Court cannot issue any mandamus to revise pension of the petitioner pursuant to the recommendations of sixth pay revision, which is not applicable in

case of the petitioner.

44. As far as the claim of the petitioner in respect of payment of interest and cost of litigation is concerned, it is true that the plea of the State in its counter affidavit that pension papers were filed in the year 2009 has not been controverted by the petitioner. However, it is equally true that an amount of Rs.1,62,720/- towards leave salary, which was payable to the petitioner within a month after retirement in 2003, was paid to him after 12 years in July, 2015 and, similarly, the petitioner was entitled for payment of pension after his retirement in January, 2003, but the same commenced only after issuance of authority letter on 30.12.2014 directing to make payment of Rs.40,000/- per year to the petitioner whereafter the SBI calculated the arrear of pension of Rs.40,000/- x 12=4,80,000/- which was paid to the petitioner.

45. In such view of the matter, I am of the opinion that unexplained and inordinate delay has been caused in payment of leave salary and pension to the petitioner even after filing of the pension papers.

46. In the facts and circumstances of the case, I am of the opinion that the petitioner is entitled to receive payment of full pension and he is also entitled to receive interest over delayed payment of pension and leave salary at least from the date of filing

of pension papers till the date of actual payment.

47. In that view of the matter, respondent nos. 1 to 4 are directed to pay the petitioner full pension from the date he retired. The petitioner shall also be entitled interest @ 8 per cent per annum from the date of filing of the pension papers till the date of actual payment of the amount of arrear of pension and leave salary. The aforesaid payable amount must be paid to the petitioner in the light of the present order within a period of three months from the date of receipt/production of a copy of this order.

48. For the reasons stated above, the claim of the petitioner for revision of pension, payment of arrears of salary and payment of lien contribution are, hereby, rejected.

49. The writ petition is disposed of in the above terms. No costs.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	22.09.2017
Uploading Date	10.10.2017
Transmission Date	10.10.2017