

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18651 of 2016

=====

Laxmi Chaudhary Son of Late Sant Lal Chaudhary, resident of Muhalla- Nasriganj,
P.S.- Danapur, Patna-12.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
2. The Director-cum-Chairman, Bihar Hindi Granth Academy Prem Chand Marg, P.S. Sultanganj Rajendra Nagar, Patna.

.... Respondents

with

=====

Civil Writ Jurisdiction Case No. 18954 of 2016

=====

Yogendra Prasad S/o Late Adiya Prasad, resident of Mohalla Bhagwan Road,
Mithapur, P.S.- Jakkanpur, District- Patna-1.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
2. The Director cum Chairman, Bihar Hindi Granth Academy, Prem Chand Marg P.S.- Sultanganj, Rajendra Nagar, Patna.

.... Respondents

with

=====

Civil Writ Jurisdiction Case No. 19025 of 2016

=====

Ashok Kumar Sinha, S/o Late Maheshwar Dayal, Resident of House No. 35,
Muhalla - Hanuman Nagar, New Punaichak, Patna - 23

.... Petitioner

Versus



- 1. The State of Bihar through the Principal Secretary Human Resources Development, Department Govt. of Bihar, Patna
- 2. The Director-cum-Chairman, Bihar Hindi Granth Academy. Prem Chand Marg, P.S. Sultanganj, Rajendra Nagar, Patna

..... Respondents
with

=====

Civil Writ Jurisdiction Case No. 19040 of 2016

=====

Vishwanath Prasad S/O Late Ghanshyam Prasad, resident of New Jakkanpur, P.S. Ramkrishna Nagar, Patna.

..... Petitioner
Versus

- 1. The State of Bihar through the Principal Secretary Human Resources Development, Department Govt. of Bihar, Patna.
- 2. The Director-cum-Chairman, Bihar Hindi Granth Academy, Prem Chand Marg P.S. Sultanganj, Rajendra Nagar, Patna.

..... Respondents
with

=====

Civil Writ Jurisdiction Case No. 19161 of 2016

=====

Md. Jahir S/o Late Noor Mohammad, resident of Muhalla Bhutana P.S. Athouri District Muzaffarpur.

..... Petitioner
Versus

- 1. The State of Bihar through the Principal Secretary Human Resources Development, Department Govt. of Bihar, Patna.
- 2. The Director Cum Chairman, Bihar Hindi Granth Academy. Prem Chand Marg P.S. Sultanganj, Rajendra Nagar, Patna.

..... Respondents
with

=====



Civil Writ Jurisdiction Case No. 8102 of 2017

=====

Ramakant Choudhary, son of late Mohan Choudhary resident of village- Fathepur,
P.S.- Didarganj, District- Patna

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary Human Resources Development, Department Govt. of Bihar, Patna.
2. The Director Cum Chairman, Bihar Hindi Granth Academy. Prem Chand Marg
P.S. Sultanganj, Rajendra Nagar, Patna.

.... Respondents

=====

Appearance :

(In CWJC No.18651 of 2016)

For the Petitioner/s : Mr. Manoj Kumar, Advocate

For the Respondent/s : MR. Kameshwar Kumar-GP17

For respondent no. 2 : Mr. Santanu Kumar, Advocate

(In CWJC No.18954 of 2016)

For the Petitioner/s : Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr. Subhash Chandra Mishra- SC16

(In CWJC No.19025 of 2016)

For the Petitioner/s : Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr. Ashutosh Ranjan Pandey-AAG15

(In CWJC No.19040 of 2016)

For the Petitioner/s : Mr. Manoj Kumar, Advocate

For the Respondent/s : SMT.Shilpa Singh-GA12

(In CWJC No.19161 of 2016)

For the Petitioner/s : Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr. Jitendra Kumar Roy No-1 SC13

(In CWJC No.8102 of 2017)

For the Petitioner/s : Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr. M.p. Yadav- GP23

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-08-2017

These writ petitions have been filed by the petitioners
for a direction to the respondents to pay the entire retiral benefits,
i.e., gratuity and benefit of 6th pay revision.

2. The petitioners are retired employees of the Bihar Hindi



Granth Academy (for short 'Academy'). Upon retirement, they have been paid their arrears of salary and leave encashment. It is not in dispute that the employees of the Academy have been extended the benefits of 4th and 5th pay revision.

3. Learned counsel for the petitioners submitted that this Court, vide order dated 06.03.2013, passed in CWJC No. 12930 of 2010 and analogous cases, has held that the retired employees of the Academy shall enjoy all the facilities akin to government servant with the exception of pension. They would be entitled to gratuity and leave encashment as well. It further held that they would be entitled to pay revision, if the Board of the Academy has decided to extend the same to their employee. He has submitted that against the said order dated 06.03.2013, the State of Bihar filed LPA No. 1569 of 2014, which was dismissed by the Division Bench on 09.05.2017.

4. He has been submitted that after dismissal of the letters patent appeal, retiral dues of the petitioners of those cases including gratuity was paid. He has further submitted that another retired employee of the Academy, namely, Abhimanyu Kumar Singh had filed CWJC No. 12962 of 2014 for payment of his retiral dues, which was allowed by this Court, vide order dated 08.09.2016.

5. In the backdrop of the facts stated above, learned counsel for the petitioners has submitted that when other retired



employees of the Academy have been paid gratuity after their retirement, there is no reason to discriminate the petitioners and deny the payment of gratuity to them. He has submitted that there is also no reason as to why the petitioners are not being extended the benefits of 6th pay revision.

6. On the other hand, learned counsel for the State has submitted that the Academy is a registered society under the Societies Registration Act. It is an autonomous body. According to the regulation, the Working Committee of the Academy is empowered to make appointment of Class III and Class –IV employees. He has submitted that prior to 09.12.1972, there was no service condition of the employees of the Academy. However, the Working Committee of the Academy in its meeting dated 09.12.1972 approved the service conditions of its employees. He has submitted that from the minutes of meeting dated 09.12.1972, it would be manifest that under the Contributory Provident Funds Scheme, the deduction of provident fund had been enhanced from 6 % to 10 % of salary and it was also resolved that though the employees of the Academy are not Government servant, the service conditions relating to Government employees would be applicable to them, but they will not get pension. He has submitted that since pension includes gratuity also and, therefore, in view of the decision of the Working Committee



dated 09.12.1972, the employees of the Academy are not entitled to gratuity. He has further contended that since the petitioners were not party to the earlier writ petitions filed by the retired employees of the Academy before this Court, the orders passed in those cases would be of no help to them and they would not be entitled to gratuity.

7. Learned counsel appearing for the Academy has supported the contention advanced by the petitioners. He has submitted that in view of the judgment of this Court in ***Ram Chandra Singh vs. the Director, Bihar Hindi Granth Academy & Ors. [2003 (1) PLJR 228]*** and the orders passed by this Court in CWJC No. 15733 of 2009, CWJC No. 15734 of 2009, CWJC No. 12930 of 2010 and LPA No. 1569 of 2014, it is not open for the State to say that the retired employees of the Academy are not entitled to receive gratuity. He has submitted that at present, only 16 employees are working and 18 had retired on different dates. Out of the said 18 retired employees, gratuity and retiral benefits were paid to Vijay Kumar Singh, son of late Thakur Yaduvansh Narayan Singh, a retired employee, pursuant to the order passed in CWJC No. 10025 of 2004. Other retired employees, i.e., Mr. Braj Bhusan Mishra, Mr. Kamal Mahto, Mr. Chitranjan Murari Prasad Verma, Mr. Yadunandan Jamadar, and Mr. Pratap Narayan were also paid gratuity by the State pursuant to different orders passed by this Court.



He has contended that in view of the fact that other employees, who approached this Court, have got relief and have been paid gratuity on allocation of fund by the State Government, the petitioners are also entitled to receive gratuity, but it is not being paid because of paucity of fund as no allocation in this regard has been made by the State. He has fairly conceded that the Board of the Academy has not decided to extend the benefit of 6th pay revision to the employees of the Academy and, hence, no payment of 6th pay revision has been made to any of the retired employees.

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

9. The issue regarding the status of the Academy is no more *res integra*. In ***Ram Chandra Singh vs. the Director, Bihar Hindi Granth Academy*** (Supra), this Court has already held that the Academy is a State within the meaning of Article 12 of the Constitution of India and, hence, a writ petition would be maintainable against it. Such issue can also not be raised by the State in view of the order passed by this Court in CWJC No. 12930 of 2010 and analogous cases wherein it has been held as under :-

“From the counter affidavits filed by the State and the Academy, it is clear and it is beyond doubt that the Academy was sponsored by the Central Government and then became a part of the



State Government. Its Chairman is the Director, Higher Education, Govt. of Bihar, Patna. The Managing Committee is nominated by Govt. of Bihar. It is funded by the Government of Bihar and thus it is too late in the day for the government to say that apart from granting aid which grant for maintaining the Academy they have no liability. The Academy being its child, the full responsibility thereof has been borne by the State Government. The State cannot starve the Academy of fund so as to deny the employees their due salary or their retiral dues. State is obliged to make necessary provisions for its payment.”

10. The objection raised by the State that the petitioners are not entitled to gratuity as pension includes gratuity, cannot be sustained in view of the finding of this Court recorded in aforesaid CWJC No. 12930 of 2010 and analogous cases wherein this Court has held that the retired employees of the Academy are entitled to gratuity and leave encashment. The operative portion of the order in this regard reads as under :-

“In that view of the matter, in my view, the status of the petitioners cannot be treated to that of government servant but at the same time it must be held that they enjoy all facilities akin to government servant with the exception of



pension. Thus, they are entitled to pay revision if the Board of the Academy has decided to extend the same to their employees. They are entitled to gratuity and leave encashment as well. Once these entitlements are there then, as noted above, it is the liability of the State to ensure its payment. It cannot escape on the plea that the Academy is registered as a society and therefore State may not be liable. In my view, it is nothing but corporatization of governmental function.”

(emphasis mine)

11. The aforesaid order passed by the writ court had attained finality, as the intra court appeal, preferred against the said order has been dismissed by the Division Bench in LPA No. 1569 of 2014. The Division Bench, in its order observed as under :-

“If the Hindi Granth Academy has been held to be a kind of limb of the State, because all funding and allocation of funds for payment to the employees of the Academy is made by the Department of Education, Government of Bihar, Patna, especially the Principal Secretary, then in absence of any Rule, which has been put in place in relation to the service conditions of these employees, they will be treated as akin to the government servant, except with the provision of pension.

Since the learned Single Judge has given



direction for benefits to the private-respondent, the appeal has been filed.

If the State can not shake off the basic fact that the State has all pervasive control over the affairs of the Academy, in question, then if there is a direction given by the learned Single Judge to meet the obligation of the employees of the Academy, cannot become a subject matter of challenge in appeal.

The learned Single Judge's decision does not suffer from any irrationality or illegality. It is a frivolous appeal on behalf of the State. It is dismissed, accordingly."

12. It has been admitted by the respondents that after the aforesaid order passed by this Court in letters patent appeal, the writ petitioners in those cases have already been paid their gratuity.

13. The contention of the learned counsel for the State that the payment of gratuity was made only to those employees, who were parties to the writ proceedings, pursuant to the order of this Court and since the petitioners were not party to the said proceedings, they would not be entitled to the relief cannot be accepted. The stand of the State is misconceived. Once this Court has decided the issue of entitlement to gratuity to the retired employees of the Academy, the same issue cannot be allowed to be raised by the State when some other employees, who superannuated on subsequent



date raised claim for payment of gratuity.

14. In that view of the matter, the State through the Principal Secretary, Education Department, Government of Bihar is directed to ensure that the entire dues of gratuity is paid to the petitioners within two months from the date of production of a copy of this order before him. However, no mandamus can be issued in favour of the petitioners to extend the benefits of 6th pay revision, as admittedly the Board of Academy has not yet taken any decision in this regard.

15. With the aforesaid observation and direction, these writ petitions are disposed of.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.08.2017
Transmission Date	NA

