

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10549 of 2017

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Suman Rani, Wife of Late Pawan Deo Narain, resident of Balaji Smriti Kunj, A-35,
Professor Colony, Shivpuri, P.O. & P.S.- Shastrinagar, District- Patna- 800023.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Bihar, Patna.
2. The Principal Secretary, Education Department, Bihar, Patna.
3. The Vice-Chancellor, Magadh University, Biodh Gaya.
4. The Registrar, Magadh University, Bodh Gaya.
5. The Finance Officer, Magadh University, Bodh Gaya.
6. The Principal, Anugrah Narayan College, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shambhu Sharan Singh with Mr. Kunwar Narayan Jamuar and Mr. Pravin Kumar, Advocates
For the State	:	Mr. Rajeev Ranjan, AC to GP 20
For the Magadh University	:	Mr. Arabind Nath Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 21-02-2018

Heard learned counsel for the petitioner; State and
Magadh University (hereinafter referred to as the 'University').

The petitioner has moved the Court for the following
reliefs:

*“ (i) To direct the respondents, in general, and
the Vice-Chancellor of Magadh University,
Bodh Gaya, in particular to grant family
pension under the provision of Group-A, i.e.*



G.P.F.-cum-Pension-cum-Gratuity Scheme of the Triple Retirement Benefit Scheme to the petitioner, a widow of Late Pawan Deo Narain, ex-Reader, Department of Botany, A.N. College, Patna who died in harness on 11.09.1998 after having served for over 27 years (the date of initially joining the service being 18.07.1971) without exercising his option for any Group provided in Article 1 of the concerned 1980-Original and 1982-Amendment Statutes. It is pertinent to note here that she (the petitioner) is entitled to family pension in the light of the Second proviso in Article-3 of the above said statutes and also in the light of (i) order dated 12.10.2006 passed conjointly by this Hon'ble Court (Patna High Court, Patna) in C.W.J.C. No. 264 of 2004: Vyas Narain Singh & Ors.- Vs.- The B. R. Ambedkar Bihar University, Muzaffarpur & Ors. Including 4 other identical cases as reported in 2007 (1) PLJR 241 and (ii) 24.12.2014 passed in C.W.J.C. No. 5776 of 2010: Dr. Nehal Ahmad-Vs.- The State of Bihar & Ors. by this very Hon'ble Court.

(ii) to direct the concerned respondent authorities to pay the entire amount of arrears and the interest thereon for physical mental and financial sufferings undergone by her hitherto.

(iii) Or/And any other relief(s)/benefit(s)



admissible under Group-A option of the Triple Retirement Benefit Scheme which the petitioner is found entitled in the eye of law.”

3. The husband of the petitioner was appointed on the post of Lecturer in A. N. College, Patna under the Magadh University on 18.02.1971. At the relevant time, there was no pensionary benefits available to the employees of the Universities but later on Statutes for grant of retirement benefits to employees of Bihar/Ranchi/Bhagalpur/Magadh/L. N. Mithila/ K.S.D. Sanskrit University was approved by the Hon’ble Chancellor on 18.11.1980 and provided for three Schemes. The first was General Provident Fund-cum-Pension-cum-Gratuity Scheme, the second was Contributory Provident Fund-cum-Gratuity Scheme and the third was Contributory Provident Fund only. The same came into effect from 14th November, 1980. The Statutes provided that within three months of its coming into force, option had to be exercised which shall be final. From the documents obtained by the petitioner, who is the widow of the deceased employee who died in harness on 11.09.1998, under the Right to Information Act, her late husband had given his option on 06.03.1981 for Contributory Provident Fund-cum-Gratuity. Thereafter, the University again came out with a notification dated 18.04.1995 by which the time granted earlier for opting for any of the



three Schemes was extended by 90 days from the date of issue of the order. The late husband of the petitioner again submitted option for General Provident Fund-cum-Pension-cum-Gratuity Scheme, on 27.02.1996. After his death, the petitioner seems to have submitted her application form for pensionary benefits and in the column of proposed pension it was written 'Contributory P. F. -cum- Gratuity'. The petitioner has claimed the benefit under Scheme-A, i.e., General Provident Fund-cum-Pension-cum-Gratuity.

4. Learned counsel for the petitioner submitted that the Statutes provided for giving option within the specified period and there was a further stipulation that if the same was not exercised within the period prescribed, the concerned employee would be deemed to have opted for the Scheme set out in Appendix-A, which is General Provident Fund-cum-Pension-cum-Gratuity. It was submitted that even if the husband of the petitioner had given any option on 06.03.1981, the same was beyond three months which has to be reckoned from 14th November, 1980 and, thus, automatically he stood placed in the General Provident Fund-cum-Pension-cum-Gratuity Scheme. Learned counsel submitted that even pursuant to the second opportunity given by the University, the option was required to be submitted within 90 days from the date of issue of the order, i.e., 18.04.1995 and again the petitioner's husband who is said to have



opted only on 27.02.1996, which is also beyond the cut off date, and changed his option to General Provident Fund-cum-Pension-cum-Gratuity scheme. Learned counsel also drew the attention of the Court to order dated 24.12.2014 passed in C.W.J.C. No. 5776 of 2010 in the case of **Dr. Nehal Ahmad Vs. The State of Bihar & Ors.** in which the Court has held that once the employee does not opt within the time in any particular scheme he is automatically to be considered under the General Provident Fund-cum-Pension-cum-Gratuity scheme.

5. Learned counsel for the University has filed counter affidavit and has taken the stand that the petitioner had filed pension papers in which in the column of proposed pension it is mentioned 'Contributory P.F.-cum-Gratuity'. It was further submitted that initially the late husband of the petitioner had also opted for the same Scheme on 06.03.1981 and, thus, him opting for General Provident Fund-cum-Pension-cum-Gratuity scheme on 27.02.1996 was beyond the last date and cannot be acted upon. However, on a query of the Court as to how the option submitted by the petitioner on 06.03.1981 can be held to be valid, as the same was also beyond the cut-off date, learned counsel for the University had no answer.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioner is entitled to grant of benefit under the



General Provident Fund-cum-Pension-cum-Gratuity Scheme. The husband of the petitioner admittedly never exercised any option within the time stipulated, at any point of time. Once such basic fact is not controverted, there cannot be any two opinions in law that he had to be placed under the General Provident Fund-cum-Pension-cum-Gratuity Scheme. The action/inaction, either on the part of the late husband of the petitioner or the petitioner herself, would not change the entitlement in law. The mere writing in the pension papers of ‘Contributory P.F.-cum-Gratuity’ would not disentitle the petitioner from grant of benefits under the General Provident Fund-cum-Pension-cum-Gratuity Scheme, in which category the late husband of the petitioner was required to be placed by the University. Moreover, learned counsel for the petitioner rightly relied on the decision of this Court in the case of **Dr. Nehal Ahmad** (supra) which covers the present case. The same view has been reiterated in another decision of this Court dated 13.02.2018 in C.W.J.C. No. 2377 of 2006 in the case of **Ramjanam Prasad vs. Rajendra Agricultural University and Others.**

7. Accordingly, the petitioner is held entitled under the Scheme enumerated under Appendix-A of the Statute, i.e., General Provident Fund-cum-Pension-cum-Gratuity. The University authorities shall work out the amount which has to be refunded by the



petitioner which she has taken under Contributory Provident Fund along with the accrued interest, in terms of the Statutes dated 18.11.1980. The amount shall be calculated, which should be intimated to the petitioner, and the same shall be adjusted by the University from the funds which are now to be released to her treating her late husband to be covered under the General Provident Fund-cum-Pension-cum-Gratuity Scheme. The same be done expeditiously and latest within a period of two months from the date of production of a copy of this order before the respondents no. 4 and 5.

8. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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