

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 11596 of 2017

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Chandradev Jha, Son of Late Anant Lal Jha, Resident of Usha Sadan, New
Balbhadrapur, Laheria Sarai, P.S. Laheria Sarai, District Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Higher Education Department, Patna.
2. The Vice Chancellor, B.R.A. Bihar University, Muzaffarpur.
3. The Registrar, B.R.A. Bihar University, Muzaffarpur.
4. The Deputy Registrar, B.R.A. Bihar University, Muzaffarpur.
5. The Finance Officer, B.R.A. Bihar University, Muzaffarpur.
6. The Principal, M.S. College, Motihari, East Champaran.
7. The Chief Secretary, Bihar.
8. The Director General of Police, Bihar, Patna.
9. The District Magistrate, Muzaffarpur.
10. The Senior Superintendent of Police, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Devi Das Srivastava, Advocate
For the B.R.A. Bihar University	:	Mr. Ajay Behari Sinha and Mr. Upendra Kumar Singh, Advocates
For the State	:	Mr. Prabhakar Jha, G.P. 27 Mr. Mukund Mohan Jha, A.C. to G.P. 27

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-04-2018

Heard learned counsel for the petitioner; State and
B.R.A. Bihar University (hereinafter referred to as the 'University').

2. The petitioner has moved the Court for the following
reliefs:

*“(a) For issuance of writ in the nature of
certiorari for quashing the letter dated 21.12.2016
issued by the Registrar, Bhim Rao Ambedkar Bihar
University, Muzaffarpur, whereby the Branch
Manager, State Bank of India, B.U. Campus Branch
Muzaffarpur has been directed for payment of*



family pension to the petitioner and other pensioners at the revised rate with the effective dates as mentioned against each and also directed that in case of excess payment adjust the amount from the payable Dearness relief hence-forth.

(b) For issuance of writ in the nature of mandamus directing and commanding the respondents to not amend/revise the family pension of the petitioner with effect from 1-12-2016 and also not recover the amount in case of excess payment, as the petitioner was appointed on 16-7-1964 as a Lecturer in Philosophy in Jawahar Lal Nehru Memorial College, Ghorasahan Champaran (Bihar) and after completion of full service he retired on 31-7-2001 from the post of Professor, Philosophy, M. S. College, Motihari and after retirement he was rightly getting family pension of Rs. 23,700/- per month till Dec. 2016, but on the basis of said letter dated 21-12-2016, the Bank is paying family pension to the petitioner at Rs. 21,545/- per month from December 2016 which is illegal and without any basis and without given any opportunity of hearing to the petitioner.

(c) For issuance of writ in the nature of mandamus directing and commanding the respondents to pay the recovered amount of family pension of the petitioner, as the petitioner retired from his service on 31-7-2001 and after laps of 15 years from his retirement any recovery order from the family pension of the petitioner is illegal.

(d) To grant any other relief/reliefs under which the petitioner found entitled into the facts and circumstances of the case.”

3. The petitioner having been appointed on a temporary basis on 16.07.1964, in J.L.N.M. college, Ghorasahan in the district of Champaran, then an affiliated college of the Bihar University. Having been appointed on a regular basis in terms of the recommendation of the University Service Commission dated



01.09.1971, which was pursuant to the request of the concerned college dated 07.10.1970 by which the University had sanctioned such post, he was transferred to M.S. College, Motihari, from where he superannuated on 31.07.2001. Thereafter, pensionary benefits were granted counting his period of service from 16.07.1964. However, later on the State Audit Team having verified the admissible claim of the petitioner during the period 01.04.2007 to 21.07.2012, recommended for re-fixing his pension counting the length of service from 01.09.1971 to 31.07.2001 and accordingly, the impugned order has been issued for making revised payment with effect from 01.12.2016 and further direction has been given to adjust the excess amount paid to the petitioner.

4. Learned counsel for the petitioner submitted that even though the college at the relevant time was affiliated but subsequently his service was also regularized with effect from 01.09.1971 and, thus, as per the provisions of the relevant Statute, the entire length of service i.e., the period spent in an affiliated college has been counted for pensionary benefits. For such proposition, learned counsel relied upon a decision of a co-ordinate Bench in the case of **Rajendra Kamti v. Lalit Narayan Mishra University** reported as **2006(3) PLJR 83**. Learned counsel further submitted that prior to re-fixation of his pension, no notice was given



to him and, thus, he did not have any opportunity to satisfy the authorities with regard to his claim being genuine.

5. Learned counsel for the University submitted that the petitioner was appointed in an affiliated college on 16.07.1964, which was not with approval of the University and only the subsequent appointment in terms of the recommendation of the University Service Commission dated 01.09.1971, being valid, has to be counter for the purposes of pensionary benefits and as the same was inadvertently and erroneously overlooked and pension fixed counting the service period of the petitioner from 16.07.1964, the State Audit Team having pointed out such defect, rightly the impugned order has been passed for re-fixation and adjustment of the excess amount paid to him. It was further submitted that for the purposes of counting of service for pensionary benefits, for the period spent under an affiliated college, Statute No. 1 at Clause 14(i) read with Clause 14(iii) mandates that such period can be counted subject to the condition that the employer's contribution to his/her Provident Fund along with interest thereon maintained in the affiliated college has been deposited in the University by the college concerned or the employee concerned or in the event of his/her death by his/her beneficiary concerned. He has taken a categorical stand that the same has not been done.



6. Learned counsel for the State was not in a position to assist the Court.

7. Having considered the matter, the Court does not find any merit in the writ application. The very appointment of the petitioner, which is apparent from the appointment letter dated 16.07.1964, copy of which is Annexure-1 to the writ application, discloses that he was appointed on the basis of an application as a Lecture in Philosophy on a temporary basis by the Ad hoc Committee of J.L.N.M. College, Ghorasahan. On a specific query of the Court to learned counsel for the petitioner as to whether there was any advertisement followed by any selection process, learned counsel is unable to give any answer. The Court would note here that there has been no statement made or material brought on record to even indicate that such appointment was pursuant to an advertisement and after fulfilling the procedure prescribed for such appointment. If the post itself was created by the University in terms of the request made by the college and the petitioner was thereafter appointed in terms of the recommendation of the University Service Commission dated 01.09.1971, that date, for all practical purposes, shall be the effective date of his appointment, as the same was in terms of the requirement of law, especially the mandatory requirement of Article 14 of the Constitution of India, that all



recruitment be made through open advertisement. Thus, if initially, the University had erroneously counted the period right from 16.07.1964, for fixing the pensinary benefits, the authorities cannot be precluded from correcting a *bona fide* and genuine mistake moreso when the money to be paid is from the public exchequer. In this connection, the Court would refer to the judgment of the Hon'ble Supreme Court in the case of **R. Vishwanatha Pillai v. State of Kerala** reported as **2004 (2) PLJR (SC) 106**, which, though, was considering the case of appointment on forged caste certificate, has none the less held at paragraph no. 19 that the rights to salary, pension and other service benefits are entirely statutory in nature and right to salary or pension after retirement flow from a valid and legal appointment.

8. Thus, the very initial appointment of the petitioner in the year 1964, having been made dehors any procedure which is recognized in law as valid for such appointment, clearly was illegal. In this connection, the Court would refer to a Full Bench decision of this Court in the case of **Ram Sevak Yadav vs. State of Bihar** reported as **2013(1) PLJR 964**, which has held, after considering various decisions of the Hon'ble Supreme Court including that in the case of **Secretary, State of Karnataka v. Uma Devi** reported as **2006(2) PLJR 363** and also **State of Karnataka v. M.L. Kesari**



reported as **(2009) SCC 247**, that the appointment made contrary to the mandate of Article 14 of the Constitution of India without open competitive selection, is illegal. In the present case, there being no averment or material to indicate that there was any advertisement or the post was sanctioned and further the language of the appointment letter dated 16.07.1964 itself disclosing that merely on the basis of an application, the petitioner was directly appointed, the mere noting in a communication of the Registrar of the University that the petitioner was working as Professor Incharge of the college from the session 1964-65 is of no help to him. In such background, when the post on which the petitioner was appointed itself was created for the first time by the University and thereafter, the petitioner was appointed in terms of the recommendation of the University Service Commission dated 01.09.1971, the petitioner cannot claim any benefit prior to that date in terms of the ratio of the judgment of the Hon'ble Supreme Court in the case of **R. Vishwanatha Pillai** (supra).

9. Thus, The Court finds that the authorities have merely corrected an error and there is no infirmity in such action. The plea of the petitioner that he has not been noticed is of not much value for the reason that this Court has afforded him ample opportunity to satisfy with regard to compliance of the provisions of the Statute, as noted above, especially Clause 14(iii) of the said



Statute having been complied with, despite the Court on earlier occasion having specifically granted time to the petitioner for satisfying the Court. Moreover, the decision relied upon by learned counsel for the petitioner in the case of **Rajendra Kamti** (supra) itself notes in paragraph no. 12 with regard to the aforesaid Statute No. 1, where the entire Clause 14 has been quoted. The Court in the aforesaid case has not taken a stand that even without compliance of the requirement of the Statute, the period has to be counted and once the petitioner has been unable to even remotely show such compliance of the Statute and further with regard to his initial appointment on 16.07.1964, having been made after complying with the requirement of law, especially Article 14 of the Constitution of India through open advertisement, such period cannot be taken into account for the purposes of counting the length of service of the petitioner for the purpose of fixing the pensionary benefits. Accordingly, to such event, the relief sought for stands rejected.

10. However, having held that, on the point of there being order for recovery on re-fixation of pension, of the excess paid, to that extent, the Court would interfere for the reason that there was no misrepresentation or contributory factor on the part of the petitioner when his pensionary benefits were initially fixed, counting his period of service right from 16.07.1964. Thus, to that extent, the



Court holds that there cannot be any recovery of the amount already paid to the petitioner. However, from the date when such order was passed for revision, the petitioner shall be entitled only to such amount of pension as has been fixed after revision in terms of such calculation having been made counting his service from 01.09.1971 to 31.07.2001.

11. The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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