IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 2377 of 2006

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Ramjanam Prasad, S/0 Late Badri Prasad, Village-Dharhara, P.O. Pali Ganj, P.S. Paliganj, District- Patna presently working as Assistant, Planning Cell, Rajendra Agricultural University, Bihar, B. V. College Campus, Patna, P.S. Gardanibagh, District- Patna.

.... Petitioner/s

Versus

1. Rajendra Agricultural University, Bihar, Pusa (Samastipur) through its Registrar.
2. Comptroller, Rajendra Agricultural University, Bihar Pusa (Samastipur).
3. Director, Planning, Rajendra Agricultural University, Bihar, B.V. College Campur, Patna-14.
4. Agriculture Production Commissioner, Government of Bihar, New Secretariate, Patna.
5. The State of Bihar through Finance Commissioner, Government of Bihar, Old Secretariate, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 13-02-2018

Heard learned counsel for the petitioner; State and Dr. Rajendra Prasad Central Agricultural University, Pusa (hereinafter referred to as the 'University').

2. As the petitioner was the original employee of Rajendra Agricultural University, Pusa, as it then was, which has now been converted into Dr. Rajendra Prasad Central Agricultural University in the year 2016, learned counsel for the University has been heard.

3. The petitioner has moved the Court for the following relief:

" That the petitioner by way of this application seek direction or directions, order or orders, writ or writs in the nature of 'Mandamus' commanding the respondent university to accept the petitioner's already submitted revised option for pension scheme and allow the retrial benefits of pension scheme on his retirement."

4. The undisputed fact of the present case is that in terms of amendment to the relevant statute relating to retrial benefits in the years 1979 and 1983, commonly known as the Triple Benefit Scheme, three options were given to the employees to opt for. The first was C.P.F. 10%, the second was C.P.F.-cum-gratuity @ 8% and the third was pension-cum-gratuity. It was stipulated in the statute that if option was not exercised by an employee within 90 days, he would automatically be governed by the third provision, that is, pension-cum-gratuity. It is not in dispute that the petitioner had not opted for any scheme in terms of the 1979 or 1983 statute. However, it appears that under Letter No. 1760 dated 25.06.1990, when again options were asked for in terms of the resolution of the Board of Management of the University, the petitioner opted for the C.P.F. Scheme, but now he claims payment of pension-cum-gratuity.

5. Learned counsel for the petitioner submitted that the original amendment in the statutes in the year 1979 and 1983 gave only 90 days for exercise of option and the petitioner not having done so, automatically had to be kept in the third category of

pension-cum-gratuity. It was submitted that in the year 1990, when the Board of Management took a decision to further extend the period seeking option, the petitioner, due to some confussion, had opted for the C.P.F. Scheme but the same was irrelevant, and, thus, the petitioner is entitled to the benefit of pension-cum-gratuity, in terms of the original statute. It was further submitted that similarly situated persons have been granted the said benefit and likewise, the petitioner is also ready to return his C.P.F. amount along with interest to the University for grant of pension and G.P.F. to him.

6. Learned counsel for the University submitted that the petitioner had specifically opted for the C.P.F. scheme and, thus, cannot be allowed to now take a stand that he be paid under the pension-cum-gratuity scheme and further, that he has also taken the amount of C.P.F. after his superannuated on 31.12.2005. For such proposition he has relied upon an unreported decision of a co-ordinate Bench of this Court in C.W.J.C. No. 1571 of 2004 in the case of **Devendra Prasad Sinha and Ors. Vs. Rajendra Agricultural University, Bihar Pusa and Ors.** dated 29.10.2010, to contend that once the petitioner has opted for C.P.F. scheme and has been paid the same, there was no question of allowing him to change his option from C.P.F. Scheme to Pension Scheme.

7. Having considered the rival contentions, the

Court finds that the petitioner is entitled to the relief claimed by him. The State being the paymaster, no financial liability can be created without its consent. In terms thereof, the State had amended the relevant statute in the year 1979 and 1983, which provided for calling for option as a one time measure within 90 days. The same also provided for the situation where the person not opting for any particular scheme would automatically be placed in the pension-cum-gratuity category. Once it is admitted that the petitioner had not opted for any of the options in terms of the 1979 and 1983 amendments to the statute, within the stipulated period, the petitioner automatically stood in the category of those who were to be given pension-cum-gratuity. The later extension of the date for giving the option, by a decision of the Board of Management, is clearly beyond jurisdiction as the Board of Management could not have created any financial liability on the State Government without its prior approval and, thus, to such extent, the said permission extending the date for giving option cannot held to be valid in the eyes of law. Once the petitioner had opted in terms of such decision of the Board of Management, which this Court has held to be without jurisdiction, the same becomes irrelevant. At the cost of repetition, the petitioner not having opted in the initial round, pursuant to the amendment brought in the relevant statute in the years 1979 and 1983, it shall be deemed in law that the petitioner has opted for the pension-cum-gratuity scheme. The judgment referred to by learned counsel for the University in the case of **Devendra Prasad Singh** (supra) is based on a different factual background. In the said case, the concerned person has been held not entitled to any relief of changing his option from C.P.F. scheme to pension scheme on the ground that initially when the amendment came in the year 1979, he had not opted for G.P.F. and had given a positive option for the C.P.F. scheme and thereafter he had again reiterated the same in the year 1990. However, the basic point is that in terms of the original amendment to the statute in the year 1979, he had opted for C.P.F. and, thus, the Court had rightly held that there was no question of allowing him to change his option to pension scheme later on. In the present case, the petitioner admittedly had not applied either in 1979 or 1983, and, thus, it has to be held that in law he is entitled to pension-cum-gratuity.

8. For the reasons aforesaid, the writ petition stands allowed. The petitioner is held entitled to benefit under the pension-cum-gratuity scheme. The authorities are directed to work out the figures and also the amount which the petitioner has taken under the C.P.F. scheme. The same shall be returned by him to the University, along with the interest as calculated by the University, within two

months from the date of the University intimating him the amount. The payment under the pension-cum-gratuity shall be made to him thereafter within the next two months.

(Ahsanuddin Amanullah, J.)

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