

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5465 of 2018

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Manju Kumari Sinha, aged about 64 years, W/o Late Pramod Kumar Verma, R/o Saket Vihar, Mitra Mandal Colony, Anisabad, Patna, P.S.- Anisabad, District- Patna- 800002.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Deptt. of Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Deptt. of Education, Govt. of Bihar, Patna.
3. Director, Higher Education Govt. of Bihar, Patna.
4. Magadh University through it's Vice-Chancellor, at Bodh Gaya, Gaya.
5. The Vice-Chancellor, Magadh University, at Bodh Gaya, Gaya.
6. The Registrar, Magadh University, at Bodh Gaya, Gaya.
7. The Finance Officer, Magadh University at Bodh Gaya, Gaya.
8. The Principal B.D. College (a Constituent Unit of Magadh University), Mithapur Patna- 800001.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar Sinha with Mr. Arvind Kumar Sharma and Mr. Chetan Kumar, Advocates
For the State	:	Mr. Rajesh Kr. Sinha, AC to GP 23
For the University	:	Mr. Shivendra Kishore, Sr. Advocate with Mr. Arabind Nath Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 21-06-2018

Heard learned counsel for the petitioner; State and
Magadh University.

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

“ That the present writ application is being filed



for issuance of appropriate writ or writs, in the nature of the writ of mandamus directing and commanding the respondents to pay the post retiral dues viz Pension, Gratuity, 314 days of Leave Encashment amount, Provident Fund amount and the amount of Group Insurance to the petitioner which have become due to the petitioner on and from 01.09.2016, consequent upon the superannuation dated 31.08.2016 of the petitioner from the post of Routine Clerk from the service of the respondent Magadh University, represented by respondent no. 4 and 6 in this case.”

3. As of now, in view of the averments made in the counter affidavit filed on behalf of Magadh University, all retiral dues have either been paid or sanctioned, except for pension, which has been denied on the ground that on the post on which the petitioner was appointed does not exist in B. D. College, Patna where she was appointed and from where she superannuated.

4. Learned counsel for the petitioner submitted that her late husband was Lecturer in the Department of Zoology in B.D. College, Patna and died in harness on 29.01.2003. It was submitted that she was appointed on compassionate ground on 27.10.2004 on the post of Routine Clerk in the College and thereafter superannuated on 31.08.2016, after having received full salary and other emoluments



for the post without any objection from any quarter. It was submitted that, thus, refusing pension on the ground that the post does not exist cannot be a factor against sanction and payment of pension to her.

5. Learned counsel for the Magadh University submitted that since even upon enquiry by the One-Man Commission of Hon'ble Justice S.C. Agrawal, it has been held that no post of Routine Clerk in B. D. College, Patna exists and, thus, keeping in view the Statute related to retiral benefits, pension is not admissible to a person admitted beyond the sanctioned strength.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioner shall be entitled to pension. The petitioner being appointed on compassionate ground, it is clear that such appointment has to be made on a post which exists and such appointment has been held to be valid. It is not the case of the respondents that the late husband of the petitioner was also working on a non-sanctioned post and, thus, when his service was valid on a duly sanctioned post, the appointment on compassionate ground is to be given by way of the policy of the authorities and such appointment has to be on a regular and valid sanctioned post. Even if it is assumed that post of the petitioner did not exist, she had no role in her being appointed on such post and it was incumbent upon the concerned



respondents to ensure that she, at the relevant point of time, was appointed on a post which was in existence. Moreover, she having continued on the post for almost 12 years without any objection from any quarter is also indicative of the fact that there was no contributory fault and laches on her part being totally unaware of the legal intricacies with regard to the post on which she was working, moreso, as she was getting the due salary and other emoluments of the post held by her. Thus, even if it is accepted that no such post of Routine Clerk existed in B.D. College, Patna, at best, the respondents can be justified in not filling up the post which was vacated by the petitioner, but as far as their liability to pay pension is concerned, they cannot shirk from the same.

7. Accordingly, for the reasons aforesaid, the Court holds the petitioner entitled for pension counting her length of service from 27.10.2004 till 31.08.2016. The respondents are directed to grant the same and start payment expeditiously and latest within a period of two months from the date of production of a copy of this order before the respondents no. 6, 7 and 8.

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

9. Before parting, as learned counsel for the petitioner submitted that even the amount of Leave Encashment has not been



actually credited into her account, the respondent no. 6 shall ensure that the same, if already not credited into the account of the petitioner, shall be credited within two weeks from the date of production of a coy of this order before him.

(Ahsanuddin Amanullah, J)

Anjani/-

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