

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9109 of 2017

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Akhileshwar Prasad Ojha Son of Late Parasnath Ojha Resident of Mohalla -
Damuchak, P.S. - Kazi Mohammad, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resource Department, Government of Bihar, Patna.
2. Baba Saheb Bhim Rao Ambedkar Bihar (BRAB) University , Muzaffarpur through its Vice Chancellor, BRAB University, Muzaffarpur.
3. The Registrar, BRAB University, Muzaffarpur at Muzaffarpur.
4. The Finance Officer, BRAB University, Muzaffarpur at Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Nikesh
For the Respondent/s	:	Mr. Smt. Binita Singh-Sc28

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 06-12-2018 Heard Mr. Sanjeev Nikesh, learned counsel for the

petitioner, Mr. Nishant Kumar Jha, leaned AC to SC-28 and Mr.

Vikash Bharti, learned counsel for the B.R.A.Bihar University.

The writ application has been filed for a direction to

the respondent authorities to implement the decision of making

payment of A.C.P./M.A.C.P. to the superannuated non-teaching

of the University issued under the signature of Registrar, B.R.A.

Bihar University, Muzaffarpur vide Memo No. B/1273 dated

11.08.2015, as contained in Annexure-P/3.

The reliefs sought for by the petitioner in paragraph 1

of the writ application read as follows:-

I. For issuance of an appropriate writ in the nature of



Mandamus for commanding and directing the Respondent Authorities to act upon their own decision issued vide Memo No. B/1273, dated 11.08.2015 (Annexure-P/3) with respect to the petitioner only and pay the arrears of A.C.P./M.A.C.P. and other consequential dues with statutory interest to the petitioner from the date of issuance of Annexure-P/3 till the date of actual payment.

II. For issuance of an appropriate writ in the nature of mandamus commanding and directing the respondent authorities to grant the financial benefits in terms of office order dated 11.08.2015 to the petitioner with statutory interest till the date of actual payment.

III. For issuance of an appropriate writ in the nature of mandamus commanding and directing the respondent authorities to fix and pay arrears of salary, gratuity and pension amount with statutory interest in terms of Memo No. B/1273 dated 11.08.2015.

IV. For any other relief/reliefs to which the petitioner deemed entitled into the facts and circumstances of the case.

The factual matrix of the case is that the petitioner was appointed as Assistant Engineer vide office order dated 20.04.1976 issued under the signature of the then Registrar of B.R.A. Bihar University, Muzaffarpur, as contained in Annexure-1. The service of the petitioner has been confirmed by the respondent authority on 04.04.1979 with effect from the date of initial appointment, i.e., 20.04.1976, Thereafter, the petitioner



was retired from the service on 30th June, 2008 having satisfactory service. Earlier the petitioner has preferred writ application being C.W.J.C. No. 15504 of 2006 for grant of A.C.P (Assured Career Progression) and for quashing the Notification, whereby petitioner was redesigned as Junior Engineer though he was appointed as Assistant Engineer. The writ application was disposed of vide order dated 27.09.2010 by a Bench of this Court granting the relief of scale and redesignation of the post. So far as grant of A.C.P. is concerned, the learned Single Judge held that the claim of the petitioner for grant of A.C.P. would not to be taken into account till the government takes a conscious decision with regard to the benefit of A.C.P. also to the employees of the University.

It appears from Memo No. B/1273, dated 11.08.2015 issued under the signature of the Registrar of the University, as contained in Annexure-P/3 in pursuance to the Governor's Notification bearing Memo No. BSU-41/2013-429/GS(I) dated 04.03.2014 and in view of the recommendation of the Screening Committee, the 1st and 2nd A.C.P. to the superannuated non-teaching employees of the University.

However, it is submitted by learned counsel for the petitioner that the multiple benefit of the same has been granted



to the petitioner. Learned counsel for the petition placed an order passed with regard to similarly situated person in C.W.J.C. No. 9322 of 20178 vide order dtd 19.04.2018, wherein the State did not dispute the entitlement of A.C.P. to the employees of the University but the payments were made after availability of the funds by the State Government. Hence, a direction was issued to make payment of the monetary benefit within a period of 60 days from the date of production of a copy of the order and the University may raise demand from the State for allocation of additional fund and in case such demand is raised by the University along with the utilization certificate of the previous allotment, State Authorities is obliged to allocate additional fund for payment of the dues. The relevant portion of the order read as follows:-

“On behalf of the State, counter affidavit was filed stating therein that State has allocated adequate fund to the University for payment of dues. No counter affidavit was filed on behalf of the University. Although the Court finds the statement in the counter affidavit is most vague that funds have been allocate for payment of dues to the employees of the university. However, the Court finds that the respondents-State has not disputed the entitlement of the petitioner and the University has granted such promotion under ACT scheme, the respondents are required to ensure payment of the monetary benefit arising out of Annexure-3 within a period of 60 days



from the date of production of a copy of this order.

In the event the University is facing financial constraint in payment, the University may raise demand from the State for allocation of additional fund and in case such demand is raised by the University along with the utilization certificate of the previous allotment, State authorities are under obligation to allocate additional fund for payment of the dues to the petitioner and alike within a further period of one month from the date of raising demand by the University. Entire exercise for payment of the dues of the petitioner may be completed by the University and State within a maximum period of six months from the date of receipt or production of a copy of this order.”

Learned counsel for the University submits that the writ application be disposed of in terms of the order passed in C.W.J.C. No. 9322 of 2017.

Learned counsel for the State has not disputed the fact that the petitioner is entitled for grant of A.C.P.

Considering the fact that the writ application was registered on 03.07.2017, no counter affidavit has been filed either on behalf of University or the State, since there is no dispute that the petitioner is entitled for grant of A.C.P. but the monetary benefit has not been paid. In the circumstances, let the University make payment of the dues of the petitioner and if the fund is not available, may raise demand of the same from the



State for allocation of additional fund and State is obliged to make available the funds for its payment. All exercise should be done within a period of three months from the date of receipt/production of a copy of this order.

Accordingly, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

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