

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7816 of 2009

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Surya Deo Prasad Sinha, son of Sri Siya Saran Pd. Sinha, village Dhanauti Pokhar, Marai Road, P.S. Industrial Area Hajipur, Dist. Vaishali, at present posted as Reader, Post Graduate Department of Botany, M.S.College, Motihari, under B.R.A. Bihar University, Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Personnel & Administrative Reforms, Bihar, Patna
3. The State Commission for Backward Classes, Bihar, 12A, Jawaharlal Nehru Marg, Patna through its Member Secretary
4. The Chairman, State Commission for Backward Classes, Bihar, 12A, Jawaharlal Nehru Marg, Patna
5. The B.R.A. Bihar University, Muzaffarpur through its Registrar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Advocate
		Mr. S.P.Pathak, Advocate
For Resp. 3 & 4	:	Mr. D.K.Sinha, Sr. Advocate
		Mr. Abhinay Raj, Advocate
For Resp. 5	:	Mr. Samir Kumar, Advocate
For the State	:	Mr. Sunil Kumar Singh, AC to SC 27

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 20-11-2018

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the respondents.

2. The petitioner seeks a direction upon the respondents to refund the amount of Rs. 1,43,154/- which has been determined as excess payment and deducted from the salary of the petitioner along with interest against pension and leave salary contribution for the period when he was on deputation as Member of the Commission for Backward Classes.



3. Mr. Tej Bahadur Singh, learned senior counsel appearing on behalf of the petitioner has submitted that the petitioner was arbitrarily deprived of the benefit admissible while he was on deputation as Member of the Commission for Backward Classes. He submits that vide Annexure-1 the respondents have arbitrarily determined Rs. 1,43,154/- as excess payment and deducted the aforesaid amount in 11 equal instalments of Rs. 13,014/- per month. Mr. Singh submitted that the petitioner was deputed as Member of the Backward Class Commission vide notification dated 3.9.2005, Annexure-2. The petitioner joined as such and thereafter he requested the Principal Secretary for pension contribution and leave encashment. Referring to Annexure-4 dated 2.8.2006 he submitted that the State Commission for Backward Class made a communication and sought clarification about the pension contribution and leave encashment salary contribution. The University replied vide Annexure-5 dated 18.9.2006. The details of contribution, basic pay, leave salary contribution, pension contribution have been worked out by the Registrar of the University and communicated to the Principal Secretary, State Commission for Backward Class. For ready reference Annexure-5 is quoted below:-

“Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur



Ref. No. B/1969

Dated 18.9.2006

To,

The Member Secretary,
State Commission for Backward Classes
9, Jawahar Lal Nehru Marg, Bihar, Patna – 800001.

Sub:- Regarding Pension contribution and leave
encashment of Dr. S.D.P.Sinha

Sir,

With reference to your letter no. S.C.B. Est. 05/2005/135 dated 02.08.06, I am directed to mention the following details in respect of Dr. S.D.P.Sinha, Reader, P.G. Deptt. Of Botany, M.S. College, Motihari, now he is on lien from 03.12.2005 for three years tenure and presently Member, State Commission for Backward Classes, Bihar, Patna with effect from 03.12.2005

(A) 1. Basic Pay on 3.12.05 19140/- 2nd stage 15.10.2005
2. Pension Cont. required to 4402/-
be released to this Univ. @23%
of Basic Pay (19140)
3. Leave Salary cont. to be released
to this Univ. @11% of Basic Pay 2105/-
Rs.19140

(B) 1. Basic Pay on 15.10.2007 19560/-
2. Pension Cont. required to be 4499/-
released to this Univ. @ 23%
of Basic Pay Rs. 19560/-
3. Leave Salary of Cont. to be 2152/-
released to this Univ. @11%
of basic pay of Rs./- 19560

You are requested kindly to see that the amount of pension contribution and leave salary contribution is remitted to this University till his retirement or till when he holds lien at this University while serving as member at the Commission.

Thanking you,

Yours faithfully,
Sd/-



Registrar 18.9.2006”

4. After the correspondence, Annexure-5, the State Commission for Backward Classes remitted the pension contribution and leave salary contribution which was later on deducted on detecting the mistake vide Annexure-1 dated 5.12.2007, whereby it was communicated that Rs. 1,43,154/- was wrongly remitted to the University against the head of ‘pension’ and ‘leave salary contribution’ and in order to adjust that excess amount a decision was taken for recovery in 11 instalments at the rate of Rs. 13, 014/- per month and that amount has already been realized.

5. Mr. Singh submitted that from materials available on the record, it would be evident that there was no fraud or misrepresentation by the petitioner for getting the pension and leave salary contribution and whatever amount was paid to the petitioner was with open eye and as such the respondents are precluded from realizing the amount as the same was paid to the petitioner with open eyes.

6. The principle of ‘open eye’ has its own limitation and it will not apply to a case where payments were made and on detecting mistake recovery has been made particularly when the recovery was made during the



continuance of the petitioner as Member of the State Commission for Backward Classes. Mr. Singh referring to annexure-11 to his writ application has submitted that on 03.12.2008 it was clarified that in the matter of pension and leave contribution, according to the University rules, for the period of foreign service, a Member who has come to the Commission on deputation from the University service is entitled to pension contribution otherwise his services shall be accumulated short in the University for pension purposes.

7. In the present facts scenario when contribution was made by the Commission on the belief that over and above the remuneration paid to the Member, the petitioner would be entitled to payment of pension/leave salary contribution. Realizing the mistake when the amount was recovered, the Court does not find any infirmity in the order. So far as the entitlement in terms of notification Annexure-11 dated 03.09.2008 is concerned, the petitioner continued up to December, 2008, the benefit in terms of Annexure-11 is admissible to the petitioner.

8. In the peculiar facts and circumstances, the writ petition is partly allowed to the extent that respondent Commission has to work out entitlement of the petitioner for



contribution in terms of Annexure-11 from 03.09.2008 to December, 2008 when the petitioner continued as Member of the State Commission for Backward Classes. The order of recovery that has already been acted upon does not warrant any interference.

9. With the aforesaid clarification, the writ application is allowed in part. Since the respondents have already adjusted the amount after depositing the contribution against pension and leave salary contribution, the University is required to take that period as continuity in service for the purpose of pensionary benefit. Accordingly, University is required to work out the entitlement of the petitioner treating his services as continuous service.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.11.2018
Transmission Date	NA

