

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.295 of 2015

IN

Civil Writ Jurisdiction Case No. 10103 of 2014

- =====
1. Vijay Shankar Rai Son of Late Narsingh Rai Village -Harpur, P.O. Pusa, P.s. Pusa, District - Samastipur presently posted as Assistant in RAU (Headquarter) Pusa, District- Samastipur.
 2. Surendra Choudhary son of Late Chote Choudhary Mohalla- Nai Sarai, P.O. Biharsharif, P.S. Biharsharif, District- Nalanda presently posted as Assistant in RAU (Headquarter) Pusa, District- Samastipur.
 3. Abhimanu Kumar son of Late Maheshawari Prasad Mohalla- Lohanipur, P.S.Kadamkuan, District- Patana presently posted as Assistant in RAU (Headquarter) Pusa, District- Samastipur.
 4. Chandra Kant Sharma son of Late Upendra Sharma village Yamunabarahi, P.O. Kamaldha, District- Sitamarhi presently posted as UDC in RAU (Headquarter) Pusa, District- Samastipur.
 5. Deo Prasad Roy Son of late Ram Bichar Roy village- Brahmpur, P.O. Parsa, District- Saran (Chapra) presently posted as UDC in RAU (Headquarter) Pusa, District- Samastipur.

.... Appellants

Versus

1. The State of Bihar through the Agricultural Production Commissioner, Department of Agriculture, Government of Bihar, Patna
2. The Agriculture Production Commissioner, Department of Agriculture, Government of Bihar, Patna
3. The Director (Administration) cum Additional Secretary, Department of Agriculture, Government of Bihar, Patna
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna
5. The Rajendra Agriculture University, through its Registrar having office at PUSA, Samastipur, Bihar
6. The Vice Chancellor, Rajendra Agriculture University, having office at Pusa, Samastipur, Bihar
7. The Director Administration, Rajendra Agricultural University having office at PUSA, Samastipur, Bihar

.... Respondents

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Appearance :

- For the Appellant/s : Mr. P.K.Shahi, Sr. Adv.
Mr. Ashish Giri, Adv.
- For the Respondent/s : Mr. Ajay Kumar Rastogi, AAG-10
Mr. Parijat Saurav, AC to AAG-10
- For the University : Mr. Arvind Ujjwal, Adv.
- =====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 14-05-2018



Heard Mr. P.K.Shahi, learned Senior Counsel appearing for the writ petitioners-appellants alongwith Mr. Ashish Giri, Advocate on record, Mr. Ajay Kumar Rastogi, learned AAG-10, for the State and Mr. Arvind Ujjwal, learned counsel for the Rejendra Agricultural Central University, Bihar.

This Intra-Court appeal under Clause-10 of the Letters Patent of the High Court of Judicature at Patna arises from the judgment and order of a learned Single Judge dated 18.12.2014 passed in C.W.J.C.No. 10103/2014, whereby the challenge of the petitioners to the orders passed by the respondents whereby the benefits under the Bihar State Employees Conditions of Service Conditions (“Assured Career Progression Scheme”) Rules, 2003 (hereinafter referred to as ‘the ACP Scheme’), was withdrawn with further stipulation of recovery of the benefits accorded to the petitioners thereunder, was rejected in reference to the stipulations present under section 25(ii) of the Bihar Agricultural University Act, 1987 (hereinafter referred to as ‘the Act of 1987’) which act has since been repealed under the Bihar Agricultural University Act, 2010 (hereinafter referred to as ‘the Act of 2010’) having pari materia provisions under section 24(ii).

Before advertng to the contentions advanced by the learned counsel for the parties, we deem it necessary to record that the



respondent University which earlier was regulated under the Act of Legislature i.e. 'Act of 1987' which got repealed and superseded by the 'Act of 2010' was converted as a Central University under an Act of Parliament by the name of Dr. Rajendra Prasad Central Agricultural University Act, 2016 (hereinafter referred to as 'the Central Act, 2016') and which came into force from the date of its publication in the Gazette of India on 28.5.2016. Though the Act was notified in the Gazette of India on 28.5.2016 but it was brought into force vide notification bearing S.O.No. 3184 dated 7.10.2016 when it was notified in the Gazette of India and declared as to the date of enforcement of the Central Act. The 'Central Act, 2016' in its Section 42(4), inter alia, provides that:

“ Any dispute or litigation, the cause of action for which has arisen between any member of academic staff, teacher, member of Faculty or other employee and the Rajendra Agricultural University before the commencement of this Act shall be instituted, prosecuted or continued between the academic staff, teacher, member of Faculty or other employee and the Rejendra Agricultural University, as if this Act had not been enacted, and all such cases shall be managed by a special cell to be constituted by the State Government of Bihar and all expenses relating to the management of such cases including any compensation payable to any person thereof shall be borne by the State Government.”



A plain reading of the transitory provision present under section 42 of the 'Central Act, 2016' would confirm that the dispute relating to grant/ refusal of the ACP benefits to these appellants has to be tested as per provision of the 'Act of 1987' which stood repealed under the 'Act of 2010', which was in force when the order impugned was passed.

Mr. Arvind Ujjwal, learned counsel appearing for the Central University, thus has rightly informed that since the issue relates to the period when the University was being regulated under the State enactment, in view of the provision present in section 42 of the 'Central Act, 2016' it would be Mr. Rastogi representing the State who would also be answering the issue relating to the University as applicable at the relevant time.

The issue in hand lies in a very narrow compass. It is not in dispute that Section 25(ii) of the 'Act of 1987' obliges the authority of the University to take a prior sanction of the State Government before taking any steps for creation of teaching/ non-teaching post involving financial liability or taking any decision for increasing of pay and allowances of its staff. 'Act of 1987' was superseded by the 'Act of 2010' and carried pari materia provisions under section 24(2) present therein. In between this period that 'the ACP Scheme' was implemented by the State Government for removing stagnation



amongst its employees with grant of financial progression until they would be promoted in a regular manner but even while implementing the Scheme, it excluded the teachers of Nationalized schools, the employees of the public undertaking or autonomous institution assisted partially or fully by the State Government as manifest from Clause 1(ii) thereof. There is no dispute that the ACP Scheme as it was implemented, excluded the Universities from its application. A protest was initiated by the Bihar State Universities and College Employees Federation (hereinafter referred to as 'the Federation') who prayed for the same service benefits as applicable to the Government staff in so far as non-teaching staff of the University and its constituent Colleges are concerned, as per its commitment present in G.O. dated 25.2.1987. A compromise was arrived at between 'the Federation' and the State Government on 16.7.2003 for parity between the employees of the constituent Colleges of the University and the State Government and the proposal was forwarded to the State Government for its implementation. Since there was a delay in implementation that 'the Federation' went on strike and the matter reached this Court in C.W.J.C.No. 10870/2008 for issuance of appropriate direction to the State Government in this regard.

In between this period an agreement was entered into between the parties on 18.7.2007 and which inter alia also provided



for extension of ACP benefits. The writ petition was thus disposed by a Division Bench of this Court with the direction to the State Government to implement its commitment reduced in writing on 18.7.2007 which as already observed, inter alia also extended the benefit of ACP Scheme to the non-teaching employees of the constituent Colleges. Feeling aggrieved, the State Government went in appeal and the Supreme Court vide its judgment and order dated 18.1.2013 enclosed at Annexure 1 refused to interfere with the mandamus issued by the High Court, rather directed the State of Bihar to implement the judgment and order of the Division Bench. While this tussle was going on between the non-teaching staff of the Universities (other than the respondent University) represented through their federation that the Board of Management of the respondent University through resolution dated 3.4.2004 decided to implement 'the ACP Scheme' for its non-teaching employees, a copy of which has been enclosed at Annexure 2 to the writ petition.

It is not in dispute that following the said resolution, the financial benefits have been granted and received by the petitioners and others. On the other hand, it is following the order of the Division Bench of this Court as confirmed by the Supreme Court that the State Government through notification No. 429 dated 4.3.2014 implemented the judgment and extended the service conditions as



applicable to the State Government employees, in so far as non-teaching employees of other Universities and constituent Colleges are concerned and which included the grant of ACP benefits.

It is not in dispute rather stands confirmed from the enactments regulating other University situated in the State that they carry pari materia provisions which obliges the University concerned to take prior sanction of the State Government before passing any resolution enhancing the financial liability.

Since this position is not disputed rather Mr. Rastogi would admit that the stipulation present under section 25 of the 'Act of 1987' as it stands repealed by section 24(2) of the 'Act of 2010' has pari materia provision in enactment regulating other University in the State viz Patna University, Nalanda University etc., we do not deem it necessary to reproduce the stipulations so present in those enactments. It is again not in dispute that except for the respondent University, the benefit of ACP Scheme has been extended to all other non-teaching staff of all the other University and constituent Colleges following the judgment of the Supreme Court as would confirm from the notification dated 4.3.2014 at Annexure 2 to the Memo of Appeal. Despite the position existing thus, that the State Government in its Agriculture Department generated a litigation by issuance of the order dated 23.12.2013.



At this stage we feel persuaded to refer to the 2nd supplementary counter affidavit filed on behalf of the respondent State today which confirms that in view the position settled, there was a discussion in the State Government whether or not, to accord similar benefit to the non-teaching employees of the respondent University by grant of post facto sanction to the benefits already accorded by the Board of Management by resolution dated 3.4.2004 and in which direction the Director, Agriculture, Bihar, Patna through his file noting dated 16.5.2012 sought post facto approval of the Finance Department, who in its usual obstructive approach and despite the matter having been settled in so far as non-teaching employees of other University and its constituent Colleges are concerned, refused to grant post facto approval but has accorded concurrence for implementation of Modified Assured Career Progression Scheme, 2010 to the non-teaching employees of the University.

We find it rather peculiar for appreciation, the reasons which crossed the mind of the Finance Commissioner while refusing to implement the provision of 'the ACP Scheme, 2003' while according sanction to implement MACP Rules, 2010 in the University which scheme simply modifies 'the ACP Rules, 2003' while superseding the same. It is following the Finance Commissioner's advice that the Director, Agriculture through letter dated 23.12.2013,



impugned at Annexure 6 to the writ petition, chose to reject the implementation of 'the ACP Scheme, 2003' in the University and by the same letter, the Comptroller of the Rajendra Agricultural University was directed for taking steps for recovery of the amount disbursed amongst its employees. The order does not stand to reason because more than 12 months back in January, 2013 the Supreme Court had settled the matter in between the State Government and the employees of other University/ constituent Colleges, which was to the full knowledge of the respondents including the Agriculture and the Finance Department but even while the State Government was preparing for implementation of the order of this Court as confirmed by the Supreme Court in January, 2013, in so far as the other Universities/ constituent Colleges are concerned, it had a step motherly, discriminatory attitude towards the respondent University to issue the directive present in the letter dated 23.12.2013, impugned at Annexure 6. Having done the damage, they have proceeded to accord benefits to the employees of other University vide notification dated 4.3.2014 at Annexure 2.

Learned Single Judge of this Court has rightly placed reliance on the provisions underlying section 25(ii) of the 'Act of 1987' to remind the University authorities of their obligation of seeking prior sanction before incurring financial liability but in the



process learned Single Judge has omitted to take note of the accompanying circumstances which renders the impugned decision of the Agriculture Department not only discriminatory and striking at the root of Article 14 of the Constitution of India but also without supportive reasons. Learned counsel for the appellants is not of target to argue that the Bihar State Litigation Policy, 2011 implemented through resolution dated 31.3.2011 is an exercise in futility because it is self eloquent that the authorities of the State Government would not allow the matter to set at rest. Such is the hopeless situation even when the Litigation Policy at paragraph 4.C(1) very clearly provides that the Government Department would consider whether or not a claim is covered under a decision of the Court and as efficient litigants would dispose it of in a like manner but the discussions above would confirm that neither the Government in its Finance Department can be held efficient nor a responsible litigant, rather like a petty litigant they have chosen to contest the claim by the petitioners which should have been provided rest in a routine manner considering that the scheme has been implemented in respect of the employees of other University and its constituent Colleges.

In fact when we framed the issues in our order dated 1.5.2018 requiring an answer from the respondent State we expected an answer in terms of the Bihar Litigation Policy, however, the



Agriculture Department through its Deputy Director while filing 2nd counter affidavit today simply reiterates the stipulations present in section 25(ii) of the 'Act of 1987' to question the right of the petitioners to the claim raised. It is while the matter is pending before this Court that a decision has been taken by the Vice Chancellor to recall the ACP benefits granted to the non-teaching employees of the University through Board resolution dated 3.4.2004 but while doing so keeping recovery aspect in abeyance.

Summarizing our opinion in the light of the discussions aforementioned we are persuaded to hold that the decision of the respondent State in its Agriculture Department as well as Finance Department to deprive the non-teaching employees of the respondent University to the benefit from ACP Scheme 2003 as well directing for recovery, while allowing similar benefits to the employees of the other Universities and its constituent Colleges, is held discriminatory and an arbitrary decision and not backed by reasons. If section 25(ii) of the 'Act of 1987' as it stands repealed by section 24(ii) of the 'Act of 2010' was an impediment, similar impediment was existing in the case of the non-teaching employees of other University and its constituent Colleges but which has been waived of. Having thus taken a decision of waiver in so far as the non-teaching employees of other Universities and its constituent Colleges are concerned, the



respondent State cannot be permitted to discriminate with the non-teaching employees of the respondent University. This relevant aspect having eluded the attention of the learned Single Judge, we are persuaded by the arguments of Mr. Shahi to disagree with the opinion expressed by him in the judgment and order impugned. In consequence, the judgment and order dated 18.12.2014 passed in C.W.J.C.No. 10103/2014 is set aside. The direction of the Director, Agriculture as contained in his letter dated 23.12.2013, impugned at Annexure 6, together with the office order bearing Memo No. 208 dated 5.5.2015 of the Comptroller, Rajendra Agricultural University, impugned at Annexure I/1 to I.A.No. 4045/2015 is quashed and set aside.

The writ petition is allowed with consequential reliefs. The interlocutory applications are disposed of.

In result, the Letters Patent Appeal is allowed without any order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.06.2018
Transmission Date	NA

