

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1941 of 2014

Dr. Surendra Bahadur Singh S/O Sri Ram Murat Singh R/O Vill. + P.O. Khan Jahanpur, P.S. Phoolpur, District - Azamgarh (U.P.), Presently Posted As Programme Co - Ordinator, K.V.K. Kishanganj, Bihar..... .. Petitioner/s

Versus

1. The Bihar Agriculture University Sabore, Bhagalpur, Through Its Registrar Having Office At Sabore, Bhagalpur
2. The Vice - Chancellor, B.A.U., Sabore, Bhagalpur
3. The Comptroller, B.A.U., Sabore, Bhagalpur
4. The R.A.U. Pusa Through Its Registrar, Having Office At Pusa, Samastipur
5. The Vice - Chancellor, R.A.U., Pusa, Samastipur
6. The State Of Bihar Through Agriculture Produce Commissioner - Cum - Principal Secretary, Agriculture, Govt. Of Bihar, Patna... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sri Niwas Jha, Advocate
For the Respondent/s	:	Mrs. Shally Kumari, Advocate
For the B.A.U.	:	Mr. Sunil Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

6 20-11-2018 Heard learned counsel for the petitioner and counsel appearing on behalf of the State as well as B.A.U.

The issue raised in the present writ application is no more res integra. In CWJC No. 2041 of 2012 vide order dated 10.12.2012 a Bench of this Court has on consideration of the entire scheme of pension and statute particularly Clause 16.1 held out that once the University has extended time for exercise of the option the case of the petitioner deserves to be considered for conversion from the scheme of CPF to GPF. Similar view was also expressed by another Bench of this Court in CWJC No. 2377 of 2006 dated 12.02.2018. The relevant part of the consideration in CWJC No. 2377 of 2006 reads as follows:-



“ 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 had 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 year 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 the 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 basis 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.

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-gr shall be made to him thereafter within the next two months.”

In view of the decision made in CWJC No. 2041 of 2012 and CWJC No. 2377 of 2006 the writ application stands allowed and disposed of. Respondents are directed to consider the case of the petitioner under Pension-cum- Gratuity Scheme following the principle laid down in CWJC No. 2041 of 2012 and CWJC No. 2377 of 2006 mentioned above and take appropriate and final decision within a maximum period of four months from the date of receipt/ production of a copy of this order.

With the aforesaid the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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