

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 11327 of 2016

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Dr. Ran Vijay Kumar Charan, Son of Late Baidya Nath Charan, resident of Mohalla Kendui, North of Surya Mandir, Near Falgu River, Ward No. 46, P.S. Magadh Medical College, P.O. G.P.O. Gaya, District - Gaya PIN 824231, E-mail rvkcharan@rediffmail.com and at present retired as Demonstrator in Physics from Gaya College, Gaya 823001 under Magadh University, Bodh Gaya 824234.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resource & Development Department (Higher Education) Government of Bihar, Patna.
3. The Joint Secretary, Higher Education, Government of Bihar, Patna.
4. The Director, Higher Education, Government of Bihar, Patna.
5. The Magadh University through Vice Chancellor, Magadh University, Bodh Gaya.
6. The Vice Chancellor, Magadh University, Bodh Gaya.
7. The Registrar, Magadh University, Bodh Gaya.
8. The Finance Officer, Magadh University, Bodh Gaya.
9. The Section Officer, (Pension), Magadh University, Bodh Gaya.
10. The Principal, Gaya College, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ran Vijay Kumar Charan (In Person)
For the State	:	Mr. Ajay Kumar Rastogi, A.A.G. 10 Mr. Parijat Saurav, A.C. to A.A.G. 10
For the Magadh University	:	Mr. Arabind Nath Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 29-03-2018

Heard the petitioner who appeared in person; Mr. Ajay
Kumar Rastogi, learned A.A.G.-10 along with Mr. Parijat Saurav,



learned counsel for the State and Mr. Arabind Nath Pandey, learned counsel for the Magadh University (hereinafter referred to as the 'University').

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

“That this is an application praying for issuance of a writ or writs, an order or orders, a direction or directions in the nature of mandamus commanding upon the respondents to fix the pension of the petitioner in the pay scale of Rs. 9300-34,800 of Demonstrator/re-designated directs from Lab Technician and to pay other retirement benefits such as the Gratuity earned Leave encashment, Group Insurance which is not paid as yet to the petitioner who is a legally and duly re-designated Demonstrator on a sanctioned post and also to quash the Para 5 of PPO Notification dated 16.03.2016 issued by Registrar Magadh University whereby he had ordered the amount of gratuity will be paid subject to payment after adjustment of the excess salary drawn in the scale of 9300-34,800 instead of Rs. 5200-20200.”

3. The issue being simple has been made complex due to various orders passed by the State Government which the University has implemented resulting in a situation where the petitioner having entered service on 12.07.1976 and superannuating on 31.01.2015, in the pay scale of Rs. 9300-34800/-, has been informed that his pensionary benefits would be fixed notionally holding him to be entitled to the scale of Rs. 5200-20200/-.

4. The petitioner submitted that at the time when he was



appointed, all due procedure was followed, including open advertisement and selection by a competent Selection Committee at the University level under the then Magadh University Act, 1961 prior to the Bihar State Universities Act, 1976 (hereinafter referred to as the 'Act'), by which the University had the power to sanction posts. It was further submitted that the Act came into force with effect from 16.08.1976 and prior to that in January, 1976, the University had taken a decision on 21.01.1976, that in place of Demonstrators, the Lab Technicians could be appointed by changing the nomenclature of the post on a purely temporary basis and that later on decision would be taken to change the nomenclature/designation, and thus, though he was appointed as Lab Technician but he joined against a sanctioned post of Demonstrator in Gaya College, Gaya under the University in the Department of Physics. It was submitted that the post of Demonstrator was sanctioned by the University on 31.03.1971, i.e., before the U.G.C. deadline of 01.01.1973 for creation of such posts. It was further submitted that such posts had fallen vacant on 02.01.1976, before the enforcement of the Act on 16.08.1976. It was submitted that he continued to be on the post which was then a teaching post, however, the State came out with an amendment in the year 2012 by which Section 2(v) of the Act was amended and the Demonstrators were



removed from the category of teachers.

5. He submitted that he had already been designated as Demonstrator in the year 2006 with retrospective effect from the date of his initial joining. It was submitted that the amendment of the year 2012, led to filing of various petitions before this Court against such removal of Demonstrator from the definition of 'Teacher', which did not succeed before the High Court and before the Hon'ble Supreme Court, though initially, there was an interim order on 15.04.2014 that the petitioners of such cases would not be reverted from the post they were occupying, but ultimately the Civil Appeals were disposed off upholding the amendment but such Lab Assistants who were given the designation of Demonstrator and continued to hold the post till that day, their status, rank and pay was protected and were directed not to be disturbed but they were held not entitled to any further benefit in conflict with the amended Act. He submitted that having been brought outside the definition of 'Teacher', he was made to superannuate with effect from 31.01.2015, but prior to that he had approached this Court in C.W.J.C. No. 17071 of 2014, for the reason that as there were two age limits prescribed for a person to superannuate i.e., one for 'Teachers' attaining the age of 65 years and another for non Teachers whose age of superannuation was fixed 62 years; in view of the interim order of the Hon'ble Supreme Court



in case of the petitioners, who had challenged the amendment of 2012 and were before the Hon'ble Supreme Court in appeal, an order passed in their favour not be reverted from the post they were occupying; on 15.04.2014, he also prayed in the aforesaid writ petition for restoring his age of superannuation to 65. It was submitted that thereafter, the Hon'ble Supreme Court disposed off the Appeals by order dated 27.02.2017 which led him to file an Interlocutory Application in C.W.J.C. No. 17071 of 2014, praying that as the Hon'ble Supreme Court had protected such persons who had continued to hold the post of Demonstrator, he should also be given such protection and allowed to continue in service. The Court did not find merit on the ground that the Hon'ble Supreme Court had used the word 'till date' and as the petitioner had superannuated prior to passing of the order i.e., 27.02.2017, such relief was denied. However, the writ petition itself was admitted for hearing, which is still pending before this Court. He submitted that since the Hon'ble Supreme Court has now given protection to the persons who had continued without being disturbed and he having derived the benefit till his date of superannuation, the same is protected and the respondents cannot change, even notionally, the pay drawn by him on the date of his superannuation, to his disadvantage, as they never issued any order with regard to either reversion from the post of



Demonstrator to Lab Assistant or reduction of the scale of pay which he was receiving.

6. Learned counsel for the University submitted that it has acted only in accordance with the various directions of the State Government but fairly admitted that it had neither reverted the petitioner to a lower post nor had reduced his pay scale till the time of his superannuation.

7. Learned A.A.G.-10 submitted that in terms of the final order of the Hon'ble Supreme Court dated 27.02.2017, the petitioner not holding the post on 'that day', due to his superannuation, his entitlement would but necessarily have to be redrawn as such protection was only to such Demonstrators who were 'continuing to hold the post on that day' and also in view of the Hon'ble Supreme Court itself observing that they shall not be entitled to any further benefit in conflict with the impugned Act (Amendment Act of 2012).

8. Having considered the submissions made by the petitioner and learned counsel for the State and University, the Court finds that the action of the respondents cannot be sustained. Without going into unnecessary areas, the Court is restricting itself to the issues which are to be considered in the present case. First of all, the admitted facts remain that the petitioner was appointed prior to the coming into effect of the Act and that too after following the due



procedure as was prescribed for such appointment, and more importantly, by the University itself. Thereafter, he continued to get the benefit and ultimately he was granted the scale of Rs. 9300-34800/-. It is nobody's case that the petitioner at any point of time had any role in the grant of such pay scale to him as the same was granted by the University and never objected by the State at any point of time during his service career and also payments were made without any hitch to him till 31.01.2015, when he superannuated attaining the age of 62 years. Now comes the stage where the Court has to consider what would happen after the petitioner superannuated, with regard to pensionary benefits being fixed. In this connection, the Court deems it appropriate to go back to the final order of the Hon'ble Supreme Court itself dated 27.02.2017 of which the relevant portion reads as under:

“We however make it clear that the present status, rank and pay of the appellants will not be disturbed. If any lab assistant has been given designation of demonstrator, which he continues to hold till date, it will not be withdrawn. They will not be entitled to any further benefits in conflict with the impugned Act.”

9. From the above it is clear that though the Amendment Act, 2012 has been upheld, but the Hon'ble Supreme Court had also consciously saved the Demonstrators who were holding the post till that day, from any adverse effect of the amendment. Thus, in effect,



it means that all such persons, who remained Demonstrators, their status, rank and pay was not be disturbed, which has also been clarified in the order itself. This obviously leads to the conclusion that once their status, rank and pay is protected, the pay which they are drawing would not be changed prejudicial to them i.e., not reduced. Once such pay is protected, the simple formula for fixing of pension being the pay last drawn is only a consequential and corollary step, upon such person attaining the age of superannuation. Such pay having been protected, now the question before the Court is whether the petitioner having superannuated in 2015 itself, that is prior to the date of passing of the order, such protection would cover his case. On this issue, after having considered the matter, the Court finds that to give a harmonious interpretation to the order of the Hon'ble Supreme Court, just because the word used is 'till date', it would not carry the literal sense of having protected only such persons who were still in service on 27.02.2017. For all practical purpose, if the petitioner was never disturbed till his superannuation, just because matters kept pending before the Courts, such restricted meaning cannot be given to the order passed keeping in mind the background of the dispute. It is only because of the time factor that the petitioner may have superannuated prior to the Hon'ble Supreme Court finally deciding the issue, but the order of the Hon'ble



Supreme Court not restricting the protection to only the petitioners before the Court but rather to all Lab Assistants designated as Demonstrators, would necessarily have to include persons who were not disturbed from the post of Demonstrator and in whose case the pay scale was also never reduced. This is the case with the petitioner. It would have been a different story if at any point of time, either the State or the University, had reverted the petitioner or reduced his pay scale. Admittedly, this has not been done.

10. In view thereof, the Court has no hesitation to hold that such protection would include the petitioner. However, the Court is not going into the aspect as to whether his status would be protected and to what extent, for the reason, that on such issue his writ petition i.e., C.W.J.C. No. 17071 of 2014, is still pending and the matter needs to be decided in such proceeding.

11. Accordingly, the petitioner is held entitled to his retiral benefits being computed on the basis of actual pay drawn by him at the time of his superannuation in the scale of Rs. 9300-34800/-. The respondents shall ensure that all retiral benefits are paid to him, after adjusting whatever has already been paid, expeditiously and latest within a period of three months from the date of receipt of a copy of this order by the respondents no. 7 and 8.

12. Any order by the State or the University passed



contrary to this order shall stand quashed and the petitioner shall be entitled to reimbursement of any amount which may have been recovered from him in terms of such orders, within the same time period.

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

(Ahsanuddin Amanullah, J.)

P. Kumar

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