IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10034 of 2011

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Prof. Lakshmi Kant Jha, S/O Late Baleshwar Jha, R/O House No. 2/615, Brahampura, Behind M.I.T. Post Office, Muzaffapur, Distt. Muzaffarpur

.... Petitioner

Versus

1. State of Bihar through the Principal Secretary, Science and Technology Department, Bihar, Patna
2. Accountant General (A & E), Bir Chand Patel Marg, Patna
3. The Senior Account Officer, Office of the Accountant General (A & E), Bihar, Patna

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Durga Nand Jha, Advocate.
For the Respondents-State: Mr. Anil Kr. Sinha, GP 26.
For the Accountant General: Mr. Chaitanya Swaroop, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
Date: 26-02-2018

Heard learned counsel for the parties.

2. The present Writ Application has been filed by the petitioner, who superannuated from service on 30.06.1998 while working as a Professor in M.I.T., Muzaffarpur, for a direction to the respondents concerned to pay arrears of revised salary by allowing merit promotion with effect from the year 1980 and other emoluments for the period of 01.01.1996 to 31.03.2000 and also the benefit of revised pension with interest @ 18% per annum along with adequate amount of compensation and penal interest.

3. Learned counsel representing the petitioner submits that the petitioner having joined on the post of Assistant Professor through Bihar Public Service Commission in July, 1962 was promoted on the

post of Associate Professor in the year 1970. It is stated that after 1980 he got promotion in special circumstances by giving alternate promotion on the post of Professor from where he superannuated on 30.06.1998. The grievance of the petitioner is that when the Central Government revised the pay scales of the employees w.e.f. 01.01.1996, the Govt. of Bihar also came out with a resolution through the Finance Department dated 05.09.2003 allowing the revised pay scales to the employees (Teaching) of MIT, Muzaffarpur, BCE, Bhagalpur, BCE, Patna, who had retired in between 01.01.1996 and 05.09.2003, but despite communication of the said resolution to the concerned officials and the college vide Annexure-1 to the Writ Application, payments were not made to the petitioner for a long time. The Finance Department's direction to the Accountant General, Bihar for payment of the aforesaid revised salary has been brought on record by way of Annexure-2 to the Writ Application. It is also stated that the Deputy Secretary of the Science & Technology Department, Govt. of Bihar had issued a sanction order addressed to the Accountant General, Bihar for payment of revised pay for the period 01.01.1996 to 31.03.2000 stating specifically in Para 7 of the order that the said amount shall be paid after release of 80% of the total dues from the Central Government. Such order was communicated vide Annexure-3 to the Writ Application to the Accountant General, Bihar.

4. It is further stated that the Central Government vide its letter dated 21.07.2010 released financial assistance to meet 80% of the additional expenditure for revision of pay scale of teachers in Degree Level Technical Institution of the State of Bihar. A copy of the letter of Central Government dated 21.07.2010 has been brought on record by way of Annexure-5 to the Writ Application. The ultimate grievance of the petitioner was that despite such release of funds by the Central Government, payments were not being made till the date of filing of the Writ Application.

5. Learned counsel for the petitioner, at this stage, accepts that immediately after filing of the present Writ Application the petitioner has already been paid arrears of salary and pensionary benefits, which is also evident from Annexure – ‘A’ to the Counter Affidavit filed by the Senior Accounts Officer, Office of the Accountant General (A&E), Bihar, Patna (Respondent No. 3). A perusal of Annexures – ‘A’ & ‘B’ would show that such payments have been made to the petitioner on or about 18th August, 2011 and 15th December, 2011 respectively.

6. Having appreciated the developments which have taken place during pendency of the Writ Application learned counsel for the petitioner, at this stage, has centered his argument on two aspects; the first submission is that because there had been inordinate delay in

payment of the admitted amount to the petitioner he should be allowed some interest in order to compensate him of the monetary loss which he has suffered on account of non-payment; the second argument of the learned counsel is that the petitioner should have got merit promotion in year 1980 itself, which he was deprived of, and no explanation as to why he could be deprived of his merit promotion has been offered on behalf of the State / University.

7. On the other hand, learned counsel representing the State has opposed the prayers made on behalf of the petitioner. His basic argument is that even though the petitioner was allowed the benefits in terms of Para (ii) of letter no. 2516 dated 31.08.2010, as contained in Annexure – 'A' to the Counter Affidavit filed on behalf of the respondent no. 1, it is evident from the contents of the said clause itself that such benefits have been allowed to the petitioner only after the adjudication of certain issues by judicial pronouncements and pursuant thereto the provisions contained in Para 8, 9 & 10 of the Resolution No. 678 dated 05.04.2003 were deleted, thereupon only the facility of pay revision was extended to the teachers, who were promoted before 01.03.1989 under State sponsored time bound promotion scheme by the resolution no. 6541 dated 09.10.2006 of the Finance Department. It is submitted that the petitioner has not challenged Annexure – 'A' to the Counter Affidavit

whereunder he is brought within the purview of the resolution no. 6541 dated 09.10.2006 and thus the petitioner has not challenged in order because he wanted to avail the benefits which accrued to him by virtue of Annexure – 'A' to the Counter Affidavit. Having received the benefits in the year 2011 itself, now the issue of merit promotion which is being claimed w.e.f. the year 1980 has no meaning and cannot be allowed to be agitated by the petitioner, particularly when this was never agitated by him prior to his retirement in the year 1998.

8. Learned counsel representing the State further submits that the petitioner would not be entitled for any interest or compensation on the amounts received by him by virtue of Annexures – 'A' & 'B' to the Counter Affidavit filed on behalf of the respondent no. 3 because it is not a case of intentional delay in payment of the benefits which accrued to the petitioner by virtue of Annexure – 'A' to the Counter Affidavit filed by the respondent no. 1. Learned counsel submits that in fact the petitioner was fully aware of the fact that the benefits were allowed subject to the condition that the amount shall be paid after release of 80% of the total dues from the Central Government, which is evident from Annexure – 3 to the Writ Application itself.

9. The petitioner has admitted in Paragraph 11 of the Writ Application that the financial assistance was released by the Central

Government only on 21.07.2010 and, therefore, if the financial assistance which was required from the Central Government was made available to the State sometimes in July, 2010 and thereafter steps were taken to pay the benefits to the petitioner, it would not be one of those cases where the petitioner would be entitled for interest or compensation.

10. Having heard learned counsel for the parties and upon perusal of the records. I find force in the submissions advanced by the learned counsel representing the State. Both the arguments of the learned counsel for the petitioner are liable to be rejected for the reasons as under:-

(i) As regards the payment of interest, this Court is convinced that the benefits, which accrued to the petitioner by virtue of Annexure – 'A' to the Counter Affidavit filed on behalf of the respondent no. 1, were subject to the release of 80% of the financial assistance from the Central Government, a fact which the petitioner has himself stated in the Writ Application; there is no denial of the fact that the Central Government released the funds only sometimes in July, 2010, therefore, if the funds were released in July, 2010 and thereafter steps were taken to make payments and in fact the payments were made vide Annexures 'A' & 'B' to the Counter Affidavit filed on behalf of the respondent no. 3 immediately after filing of this Writ

Application, I do not find it one of those cases where the State should be directed to pay interest to the petitioner. The prayer for award of interest is accordingly rejected.

(ii) The second argument of the learned counsel that the petitioner would have been entitled for merit promotion in the year 1980 seems to be a half-hearted-submission inasmuch as learned counsel himself accepts the factual position that the petitioner, prior to filing of this Writ Application, had never agitated this issue of merit promotion in the tear 1980 and he retired fully in the year 1998. He has also availed benefits in terms of clause (ii) of the letter dated 31.08.2010, as contained in Annexure – 'A' to the Counter Affidavit filed on behalf of the respondent no. 1. This Court would, therefore, reiterate that such submission claiming merit promotion w.e.f. 1980 is only for sake of argument and is liable to be rejected at the outset.

11. The Writ Application has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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