

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 223 of 2017

=====

Nakul Prasad Singh, S/o Sri Ram Charitra Singh, resident of Village - Numar, P.O. Numar, P.S. Malepur, District – Jamui.

.... Petitioner/s

Versus

1. The State of Bihar through it's the Secretary, Higher Education Department Government of Bihar, New Secretariat, Patna.
2. The Director, Higher Education Department, Government of Bihar, New Secretariat, Patna.
3. Tilka Manjhi University, Bhagalpur through it's Vice – Chancellor.
4. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.
5. The Finance Officer, Tilka Manjhi Bhagalpur University, Bhagalpur.
6. The Principal, D.S.M. College, Jhajha, Jamui.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Niraj Kumar, Advocate
For the University : Ms. Rekha Prasad, Advocate
For the State : Mr. Rajeev Ranjan, A.C. to G.P. 20

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 27-09-2018

Heard learned counsel for the petitioner and T.M.

Bhagalpur University (hereinafter referred to as the ‘University’).

2. The petitioner has moved the Court the following reliefs:

“[A] For the issuance of writ in the nature of mandamus or any other appropriate writ/writs order/orders direction/directions commanding the respondents to pay all post-retirement benefits i.e. Pension, Arrears of pension, Gratuity, Leave Encashment, Group Insurance of the petitioner.

[B] For issuance of direction/directions to the Respondents to give and grant all service benefits as are applicable to regular employees like increments, promotion/ACP benefits arrears of salary etc.

[C] For issuance of any other appropriate writ/writ, order/orders, direction/directions for



which the writ petitioner shall be found entitled under the facts and circumstances of the case.”

3. The petitioner was initially appointed by the Governing Body in the College which was affiliated on 06.05.1980 on the post of Peon. The College was made constituent on 18.04.1982. The petitioner was disengaged by order dated 30.08.1999, but challenge to the same in C.W.J.C. No. 2047 of 2000, resulted in order dated 08.05.2000 by which such disengagement was set aside. Though, the University filed L.P.A. No. 37 of 2001, against the order dated 08.05.2000, the same was withdrawn on 18.02.2002 and thereafter, the service of the petitioner was restored by letter dated 21.06.2002. As the order dated 08.05.2000 also stipulated the State Government to take a decision with regard to regularization of the service of the petitioner, the same was done but the prayer was rejected by the Secretary, Higher Education Department, Government of Bihar, Patna by order contained in Memo No. 918 dated 28.10.2002. Being aggrieved the petitioner again moved the Court along with others in C.W.J.C. No. 10784 of 2003 in which a direction was given for considering the case of absorption of the petitioner and others by order dated 03.04.2013. However it was also clarified that they shall not be entitled to payment of any arrears of salary and the same would be made only with effect from the date



the Vice Chancellor would pass fresh order directing their absorption. In terms thereof, the University passed order dated 18.10.2014 appointing the petitioner and others on the post they were holding, which was subsequently modified by order dated 24.12.2014, by which they were absorbed on the post. The petitioner subsequently superannuated on 31.01.2016 and the Principal of the College, by letter dated 26.02.2016, forwarded his claim for retiral benefits to the University. The same not being paid, the petitioner has moved the Court in the present writ application.

4. Learned counsel for the petitioner submitted that he is restricting his relief to pensionary benefits.

5. He submitted that even after fulfilling the entire criteria for payment of retiral benefit, the same is being denied to him on the ground that his service was regularized by order of the Vice Chancellor dated 18.10.2014, which is erroneous. It was submitted that the very concept of absorption indicates that the petitioner was already holding a post and working on it and, thus, the relevant Statute providing that for the purposes of retiral benefits, the qualifying service would include all previous periods including those spent under probation either on temporary or officiating capacity followed without interruption by substantive appointment. It was submitted that the petitioner having continued on the post without



interruption, the University is required to consider and pay the post retiral dues of the petitioner for the entire length of his service.

6. Learned counsel for the State submitted that the stand taken by the University that the period of qualifying service would start only from the day the service of the petitioner was absorbed i.e., 18.10.2014 is correct and the petitioner is not entitled to any post retiral benefit.

7. Learned counsel for the University has filed various affidavits and also a 4th supplementary counter affidavit today, but fairly took a stand that the case of the petitioner is covered by a Division Bench judgment of the Court in L.P.A. No. 901 of 2008 in the case of **Nand Lal Mandal vs. The Tilkamanjhi Bhagalpur University & Ors.**, on the issue of counting of the period of service of the petitioner for pensionary benefits.

8. Having considered the same and also the provisions of the Statutes relating to payment of retiral benefits and the Statutes for grant of retirement benefits to employees of the Bihar /Ranchi /Bhagalpur /Magadh /L.N. Mithila/ K.S.D. Sanskrit University as approved by the Chancellor, which provides for pension based on qualifying service and Clause 14 (i) of the same stipulating that if the service is rendered on a full time basis including period spent on probation either on temporary or officiating capacity followed



without interruption by substantive appointment in the same or any other post, shall count as qualifying service. Thus, from the aforesaid it is clear that the Court only directed in its order dated 03.04.2013, that arrears of salary would not be paid but that would not amount to the entire past service of the petitioner being washed away, as the same is also governed by the relevant Statute and Clause 14(i) of the same stipulating that such period has also to be reckoned, the Court finds that the petitioner is entitled to payment of his retiral benefits counting the entire period of service.

9. At this juncture, the Court would clarify that though the petitioner had been disengaged in terms of order dated 30.08.1999, but ultimately upon the Court setting aside the order on 08.05.2000, it would be deemed that the petitioner continued in service and there was no break in the same and, thus, the absorption of the petitioner has to be seen in continuity as far as his service period is concerned.

10. The Court would like to record its appreciation for the conduct of learned counsel for the University for having fairly indicated to the Court that the case of the petitioner is also covered by the judgment of the Division Bench of this Court in the case of **Nand Lal Mandal** (supra). The Court would record that representing the University, which is State under Article 12 of the Constitution of



India, she has ably discharged her duty both towards the party she represents, as is expected in law, by assisting objectively without any bias and ill-will, and also towards the Court by fairly and truthfully disclosing the law settled on the point.

11. For reasons aforesaid, the writ petition stands allowed with a direction to the Vice Chancellor, Registrar and Finance Officer of the University to ensure that all retiral benefits of the petitioner are paid to him taking into consideration the period of service from 06.05.1980. Such payment be made within two months from the date of production of this order before the Vice Chancellor, Registrar and Finance Officer of the University.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	AFR
U	

