IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25523 of 2013

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NAWAL KISHORE UPADHYAY S/O LATE SIDHESHWAR UPADHYAY RESIDENT OF VILLAGE- GOH, P.O- GOH, POLICE STATION- GOH, DISTRICT- AURANGABAD.

... ... Petitioner/s

Versus

1. The State Of Bihar, Through The Secretary, Department Of Education, Patna.
2. The Vice Chancellar, Magadh University, Bodh Gaya.
3. The Registrar, Magadh University, Bodh Gaya.
4. The Financial Advisor, Magadh University, Bodh Gaya, Gaya
5. The Finance Officer, Magadh University, Bodh Gaya.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tej Narayan Singh
For the Respondent/s	:	Mr. Prasoon Sinha

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

5 14-08-2018

1. Counsel appearing for the petitioner submits that the original petitioner died during the pendency of the writ petition and for substitution of the original petitioner I.A. No. 7508 of 2017 has been filed.

2. Considering the facts and circumstances enumerated in I.A. No. 7508 of 2017 the petition for substitution is allowed and the name of original petitioner is expunged and in place of the original petitioner widow Malti Devi is substituted as petitioner No.1 (a).

3. Learned counsel for the petitioner submits that the claim of the petitioner in the instant case is non-payment of arrears of salary.

4. The respondents have disputed the entitlement of the payment of the original petitioner and in its counter affidavit stand has been taken in paragraphs No. 6 to 8 and with reference to the objection of Auditor, stand has been taken that the University is bound to follow the direction of the Auditor deputed by the State Government.

5. Paragraphs 6 and 7 of the counter affidavit filed on behalf of the University is reproduced for ready reference:-

> " That it is stated that the petitioner was given senior selection grade in the cadre of Head Typist in the pay scale (580-840) designated as Superintended (Typist) vide Memo No. 498/61A dated 12.4.1988 on the basis of State Government letter no. 5015 dated 05.05.1981. The promotion on Selection Grade within cadre is deemed to be the personal promotion. In pursuance of the aforesaid letter dated 05.05.1981, the petitioner has been granted promotion vide memo no. 1109/GI dated 07.06.1983.
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> That it is stated that as per the provision of Section 35 of the Bihar State

Universities Act, 1976 and relevant Statutes, the approval and consent of the State Government is required where the financial matter is involved. As such, creating a designated post of Superintended (Typist) and next personal promotion was required approval and an adequate direction of the State Government. The State Government deputed a team of 6 Auditors in the University for the verification of post and pay fixation. Auditor examined the service record of the petitioner and vie letter no. 16 dated 11.02.2013, stated that as per the notification of State Finance Department, Bihar vide No.3/PAR/3/81/5015 dated 05.05.1981 working typist were provided the pay scale of junior and senior grade of typist. Hence, the petitioner was granted promotion accordingly promotion to the post of Superintended is beyond the direction of the State Government. Thus, the petitioner was only entitled for promotion to the rank of

Junior and Senior grade of typist. The auditor recommended the pay scale of the petitioner as follows:

06.12.1969	Typist	(105-3-123-2155)	= 105
15.07.1968	Head Typist	(150-5-130-5-200)	=150
01.03.1979	"	(296-8-360-10-460)	=296
01.03.1981	"	"	=360
01.04.1981	"	(680-12-965)	=770
01.01.1986	"	(1320-2040)	=845
01.01.1986	"	(1320-2040)	=1600
01.01.1996	"	(4000-6000)	=6000+179
31.102002	"	"	=6300”

6. It has been settled by the series of decision of this Court that the auditor of the State Government has no role in the matter of pay fixation. Pay fixation is the domain of statutory pay fixation committee of the Universities and as such the action of the Auditor of the State Government is totally without jurisdiction. Under the aforesaid circumstance the order adverse to the interest of the petitioner cannot be sustained. Accordingly order contained in Annexure-12 is quashed.

7. The respondents are hereby directed to take

afresh decision in accordance with law without being prejudiced by the objection of the State Government Auditor and pass afresh order for payment of the dues amount of the petitioner within a maximum period of four months from the date of receipt/ production of a copy of this order.

8. With the aforesaid the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

T.Kr./-

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