

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.8 of 2015

In

Civil Writ Jurisdiction Case No.22962 of 2012

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-
1. The State of Bihar through the Principal Secretary, Department of Human Resources and Development (Higher Education), Government of Bihar, Patna.
 2. The Director, Higher Education, Government of Bihar, Patna.

... .. Appellants

Versus

1. (I) Smt. Munni Devi, W/o- Late Yugeshwar Mahto
- 1.(ii) Suresh Kumar Mahto
- 1.(iii) Ramesh Kumar Mahto
- 1.(iv) Dinish Kumar Mahto

All S/o- Late Yugeshwar Mahto, R/o- Village – Kubaute, P.S. N.H.Bangra,
Distt.- Samastipur

2. The Accountant General, Bihar, Patna.
3. The Director, Rural Institute of Higher Studies, Birouli, Samastipur.
4. L.N. Mishra University through the Registrar, Darbhanga.

... .. Respondents

with

Letters Patent Appeal No. 806 of 2015

In

Civil Writ Jurisdiction Case No.20723 of 2012

-
-
1. The State of Bihar through the Principal Secretary, Department of Human Resources and Development (Higher Education), Government of Bihar, Patna.
 2. The Director, Higher Education, Government of Bihar, Patna.

... .. Appellants

Versus

1. Ram Khelawan Rouat, Son of Late Bisheshwar Rouat, Resident of Village - Birouli, P.S. - Pusa, District - Samastipur.
2. The Accountant General, Bihar, Patna.
3. The Director, Rural Institute of Higher Studies, Birouli, Samastipur.
4. L.N. Mithila University through the Registrar, Darbhanga.

... .. Respondents

with

Letters Patent Appeal No. 1269 of 2014

In

Civil Writ Jurisdiction Case No.10409 of 2012

-
-
1. The State of Bihar, through the Principal Secretary, H.R. D. Department (Higher Education), Government of Bihar, Patna
 2. The Director, Higher Education, Government of Bihar, Patna

... .. Appellants

Versus

- 1 (I) Smt. Dayan Devi-widow, W/o- Late Dhanu Das
- 1 (ii) Sakal Deep Rai-Son, S/o – Late Dhanu Das



- 1 (iii) Rambriksh Rai-Son, S/o- Late Dhanu Das
All are R/o- Vill.- Marsand Malpur, P.S. - Pusa, District-Samastipur.
2. The Accountant General, Bihar, Patna.
3. The Director, Rural Institute of Higher Studies, Birauli, Samastipur.
4. L.N. Mishra Mithila University, Darbhanga, through the Registrar, of L.N. Mishra University, Darbhanga.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 8 of 2015)

For the Appellant/s	:	Mr. S. Raza Ahmad, AAG-5 Mr. Vishwambhar Prasad, AC to AAG5
For the Respondent/s	:	Mr. Dilip Kumar Roy, Adv.
For the Institute	:	Mr. Shashi Bhushan Singh, Adv.
For the A.G.	:	Mr. Chaitanya Swaroop, Adv.
For the LNMU	:	Mr. Md. Nasdim Seraj, Adv.

(In Letters Patent Appeal No. 806 of 2015)

For the Appellant/s	:	Mr. S. Raza Ahmad, AAG-5 Mr. Vishwambhar Prasad, AC to AAG5
For the Respondent/s	:	Mr. Shashi Bhushan Singh, Adv.
For the A.G.	:	Mr. Chaitanya Swaroop, Adv.
For the LNMU	:	Mr. Md. Nasim Seraj, Adv.

(In Letters Patent Appeal No. 1269 of 2014)

For the Appellant/s	:	Mr. S. Raza Ahmad, AAG-5 Mr. Vishwambhar Prasad, AC to AAG-5
For the Respondent/s	:	Mr. Madhu Prasun, Adv.
For the Institute	:	Mr. Chaitanya Swaroop, Adv.
For the A.G.	:	Mr. Raghwanand, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 04-02-2019

Heard Mr. S. Raza Ahmad, learned AAG 5 for appellants in the Letters Patent Appeal, Mr. Shashi Bhushan Singh, learned Counsel for the Rural Institute of Higher Studies, Samastipur, Md. Nadim Seraj, learned Counsel for the University, Mr. Chaitanya Swaroop, learned Counsel for the Accountant General and Mr. Dilip Kumar Roy and Mr. Madhu Prasun, learned Counsel for the writ petitioners.



The three appeals arise from the judgment and order of a learned Single Judge passed in CWJC No. 22962/2012, 20723/2012 and 10409/2012 which were heard analogous and allowed to hold that paragraphs 6 and 8 of the Rural Institute, Birouli, Samastipur, Service Condition Rule, 2004 (hereinafter referred to as 'the Rules') does not have a retrospective effect and cannot be applied retrospectively to those who were in service as on that date, to withdraw the post retiral benefits being paid to such of the employees who superannuated a day prior to enforcement of 'the Rules'. We are persuaded to reproduce the relief claimed by the writ petitioners in the three writ petitions which gave rise to the appeals for they amply demonstrate that it is feeling aggrieved by the intent shown by the framers of 'the Rules' to withdraw the benefits of pension, gratuity and general provident fund to the employees of the Rural Institute of Higher Studies, Birouli, Samastipur which has aggrieved these writ petitioners to move this Court and which runs under:

“CWJC No. 22962 of 2012 & CWJC No. 20723 of 2012

- i. For issuance of appropriate Writ/Writs, Order/Orders declaring Paragraph No. 6 of the Service Condition Rule, 2004 of the Rural Institute, Berouli, Samastipur not having retrospective effect and the same does not apply to the case of the Petitioner so far as it relates to the eligibility regarding payment of Pension/ Gratuity/



G.P.F., who had retired on 29.02.2008 while working as Peon (Krishni Anusevak) in the aforesaid institute in view of the fact that similarly situated persons are getting the pension.

ii. For issuance of appropriate Direction/ Directions commanding the Respondents concerned to pay the petitioner regular pension, arrears of pension and other admissible retiral dues w.e.f. the date of retirement with statutory interest.

iii. For issuance of appropriate Order/Orders, Direction/Directions commanding the respondents to hold the petitioner as Government/University servant and as such entitled for all retiral benefits including pension, Gratuity, G.P.F. etc.

CWJC No. 10409 of 2012

1 That this writ application is being filed for issuance of writ of certiorari to declare that Para-6 of the service condition rule 2004 of the Rural Institute, Berauli (Samastipur) cannot have retrospective operation so as to apply to the case of the Petitioner (so as far as it relates to the eligibility regarding payment of Pension/gratuity/G.P.F) who had been in the Govt. service since 1966 and retired on 31.1.2008 while working as a peon (Krishi Anusewak) in the aforesaid Institute.

And

To hold that the petitioner is entitled for pension, Gratuity and G.P.F. at par with the Govt. Servants

And



For issuance of Writ of Mandamus to pay to the petitioner the regular pension and arrears of pension and other admissible retiral dues w.e.f. the date of retirement with interest.”

Learned Single Judge while hearing the writ petitions has held that paragraph 6 of ‘the Rules’ does not have a retrospective effect to cover the case of the petitioners, who would be entitled to payment of retiral dues to which they are entitled on the date of retirement and that these Rules would not extend to them nor withdrawal of facility would have any effect in so far as these petitioners are concerned.

We fail to appreciate any infirmity in the legal position settled by the learned Single Judge because in our opinion it does not require a reference to any judicial pronouncement to hold that ‘the Rules’ made in exercise of executive power, cannot be applied retrospectively to cover past transaction unless it has a legislative support which shows intent to make the Rule retroactive to cover past transactions. Such is not the case here. For the proposition so well settled, we find no infirmity in the opinion of the learned Single Judge.

We are further fortified in our opinion in view of the judgment of a Division Bench in L.P.A.No. 83/2016 arising from a judgment of a learned Single Judge in C.W.J.C.No. 5651/2012



heard analogous with a batch of writ petitions involving identical issues relating to withdrawal of superannuating age by virtue of enforcement of 'the Rules'. While the learned Single Judge upheld the claim of the writ petitioners to allow the writ petition, the opinion of the learned Single Judge has been interfered with by the Division Bench but in our opinion, the expression given by the Division Bench to disagree with the judgment of the learned Single Judge in fact goes on to support the claim of the present petitioners in so far as they claim superannuation benefits to which they were entitled until the Rules came into force. For the purpose we are persuaded to reproduce few paragraphs of the judgment of the Division Bench in L.P.A.No. 83/2016 which runs under:

“7. Even though the 19.03.2004 notification was labelled as 'Seva Sharta Niyamawali, 2004', but from perusal of the notification, it is not clear whether this Rule had any statutory force or not because the notification does not seem to indicate as to under what power and authority this Rule had been made. If this be so, then it is more in terms of the guidelines which will govern the service conditions of the employees of the Institute rather than having any statutory force as such.

8. This notification of 2004 Rules, giving the status of the employees akin to employees of an affiliated



college, obviously did not make the employees very happy as there were many a reasons like no regular payments. The payments too were not even respectful and there are whole lot of other issues which compelled the employees not to accept the 'Rules'. They preferred to file CWJC No. 12538 of 2001. This writ application was filed against the decision and recommendation of the three member committee, even before the so-called Rules of 2004 came to be notified.

9. CWJC No. 12538 of 2001 finally came to be heard and decided on 14.03.2005. The argument before the learned Single Judge in the above writ application was that they would like to be treated at par with the Bihar Education Service Class-II rather than as employees of an affiliated college which this Institution was declared. The whole argument through and through noticed by the learned Single Judge that they be given status of Bihar Education Service Class-II scale and service benefits. The learned Single Judge after having taken note of the arguments and submissions had this to say:

“ Taking the argument of the State and the petitioner into consideration and the different resolutions of the State Government and the proceedings of the Committee as discussed above, one aspect which is clear is that the Institute today is an autonomous Institute and the Lecturers of the Institute have been treated as at par with those officers of Bihar Education Service Class-II both so far as pay is concerned as well as service conditions. Counsel for the petitioner also contends that main thrust of their argument is with regard to the service condition of the petitioner and the like.



In view of admitted facts, this Court has no difficulty in holding that so far as the pay scale and the service conditions both of the petitioner and their like are concerned, their service conditions are the same/at par with the employees of the Bihar Education Service Class-II.

The writ application succeeds to the extent that both the pay scale and the service condition of the employees of the Institute, i.e. in the grade of petitioner, would be at par with those of Bihar Education Service Class-II but he would not be a Government employee as he is an employee of an autonomous institution.”

10. From a perusal of the order quoted above, it is evident that the employees of the Institute came to be conferred status and service conditions which was available to Bihar Education Service Class-II. The Court, however, made it absolutely clear that they will not be treated as Government employees but continue to be employees of an autonomous body or Institution which it was as it was registered under Societies Registration Act.

25. All these employees will be treated to be Bihar Education Service Class-II and the benefit, which they will derive, will be the same benefit, which has been extended by the State Government to Bihar Education Service Class-II though they will not be treated as State Government employees as that is what has been declared by the learned Single Judge in the order dated 14.03.2005.”

The opinion of the Division Bench certainly puts a quietus to one aspect of the matter i.e. status of these employees,



who are held at par with those in Bihar Education Service Class II, Govt. of Bihar. The Division Bench has held that these employees will be treated as Bihar Education Service Class-II and the benefit that they derived would be the same as extended to those employees in Bihar Education Service Class II but they would not be treated as State Government employees.

A plain reading of the relief claimed by the petitioners in this batch of cases nowhere indicates any such relief being claimed by the petitioners for being treated as Government employees. All that they pray is that the benefits which was being given to them including the superannuation benefits should continue and be not affected by framing of 'the Rules' in 2004. It is in this background that the writ petitions were filed with a prayer to declare that 'the Rules' can not have a retrospective effect to cover such of the employees including the petitioners who were either already in service on the date the Rule came into force or retired prior thereto. The learned Single Judge in the judgment put to challenge before this Court has simply held that 'the Rules' being executive in nature and not having a legislative support cannot be made retrospective to cover past transaction as well as to alter service condition of the employees who were



already in service even if, it can be prospectively applied to those coming into service after 5.1.2004.

Rule 6 of 'the Rules' which is under discussion herein, reads under:

“6. संस्थान कर्मियों के लिए यात्रा भत्ता/चिकित्सा भत्ता/अवकाश/ इत्यादि ललित नारायण मिथिला विश्वविद्यालय के अंगीभूत महाविद्यालय के कर्मियों के सदृश्य अनुमान्य होगा। संस्थान के सभी शिक्षकेत्तर कर्मियों के मामले में महाविद्यालय कर्मियों के लिए प्रवृत्त प्रोन्नति नियमावली एवं अन्य शर्तें (पेंशन/उपदान/सामान्य भविष्य निधि छोड़कर) लागू होगी।”

A plain reading of this Rule would confirm that as until framing of the Rule on 5.1.2004, the employees of the institute were entitled to pension, gratuity and general provident fund as admissible to the employees in Bihar Education Service Class II because if this facility was not admissible to them there was no occasion to withdraw the same.

Learned counsel for the writ petitioners have invited attention of this Court to the pleadings of C.W.J.C.No. 10297/2015 which is being heard alongside to confirm the position that the employees of the 'Institute' were entitled to the benefit of pension, gratuity and general provident fund as manifest from the sanction order issued by the Accountant General at Annexure 6 series to C.W.J.C.No. 10297/2015.



We do not intend to go any further because the opinion of the Division Bench in L.P.A.No. 83/2016 at least as regarding admissibility of superannuating benefits to which the employees in Bihar Education Service Class II are found entitled and is extendable to the employees of the institute, is not in dispute and which opinion has been affirmed until the Supreme Court when the SLP of the State of Bihar was dismissed. Now, there is absolutely no contest that the Government employees of the Bihar Education Service Class II are entitled to pension, gratuity and provident fund and since the Division Bench has upheld the claim of the employees of the institute to the benefit as found admissible to the employees of Bihar Education Service Class II, these employees can not be denied the same superannuating benefits as admissible to the employees in the Bihar Education Service Class II.

As we have observed above, if this facility was not being allowed to the employees of the institute until the framing of 'the Rules', there was no occasion to withdraw this benefits by framing paragraph 6 in the Rule in question.

These appeals were heard by a Division Bench on 7.1.2015 when the batch of appeals was admitted for hearing and while passing order on admission, the Division Bench allowed the



writ petitioners, who are respondents in the appeal, the post retiral benefits including payment of pension albeit from prospective effect i.e. from the date of filing of the writ petition.

Mr. Ahmad, learned AAG-5, informs that the order of the Division Bench has been complied with and the respondents-writ petitioners in the appeal are drawing their superannuating benefits. According to Mr. Ahmad, perhaps even arrears to these writ petitioners have been paid which fact is admitted by the learned counsel appearing for the writ petitioners. In other words, the order of the learned Single Judge in holding that paragraph 6 of the Rules is not retrospective and that the writ petitioners would be entitled to the superannuation benefits as before, has taken its shape and has been implemented which for all practical purpose renders the appeals infructuous.

For the discussions that we have held above, it is only a formality to now hold that neither the judgment and order of the learned Single Judge suffers any infirmity on the interpretation of the Rule so framed nor the action of the appellants to act in furtherance thereof to make payment of superannuation benefits to the respondents- writ petitioners not only from the date of the interim order passed by this Court on 7.1.2015 but even of the arrears of the post retiral benefits to which the respondents- writ



petitioners are found entitled, in its entirety, would suffer any infirmity because the Rule so framed cannot be applied to all those who were already in service of the institute when the Rule came into force on 5.1.2004 nor their service conditions could be altered by an executive act.

Having held thus, in case the respondents- writ petitioners have not been paid any part of their superannuation benefits in so far as it relates to pension, gratuity and general provident fund, the concerned authorities in appellant department would ensure its payment within three months from today but for the opinion that we have expressed above, we find no reason to interfere with the judgment and order of the learned Single Judge impugned in this batch of appeals.

The appeals are accordingly dismissed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Archana/
Surendra/-

AFR/NAFR	NAFR
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