IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.819 of 2015

==

Ram Babu Mehta Son of Late Ram Narayan Mehta. Resident of Mohalla - Ram Babu Colony, Arfabad, Police Station - Alamganj, Patna - 800007, District - Patna.

... ... Appellant/s

Versus

1. The Patna University and Ors
2. The Vice-Chancellor, Patna University, Patna.
3. The Registrar, Patna University, Patna.
4. The Population Research Centre through Head of the Department of Statistics-cum-Director, Populatio
5. The Ministry of Health and Family Welfare Statistics Division PRC Secretary, Ministry of Health an
6. The Director, Ministry of Health and Family Welfare, Government of India, New Delhi.
7. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patn
8. The Principal Secretary, Education Department, Government of Bihar, Patna.
9. The Director Higher Education, Government of Bihar, Patna.

... ... Respondent/s

==

with

Letters Patent Appeal No. 1077 of 2015

==

Ali Imam Son of Late Md. Ushman. Resident of Alamganj, Peervais, Police Station - Alamganj, Patna - 800007, District - Patna.

... ... Appellant/s

Versus

1. The Patna Universityand Ors
2. The Vice-Chancellor, Patna University, Patna.
3. The Registrar, Patna University, Patna.
4. The Population Research Centre through Head of the Department of Statistics-cum-Director, Populatio
5. The Ministry of Health and Family, Welfare Statistics Division PRC Secretary, Ministry of Health a
6. The Director, Ministry of Health and Family Welfare, Government of India, New Delhi.
7. The State of Bihar through the Principal Secretary, Education Deptt, Government of Bihar, Patna.
8. The Principal Secretary, Education Deptt., Government of Bihar, Patna.
9. The Director Higher Education Government of Bihar, Patna.

... ... Respondent/s

==

Appearance :
(In Letters Patent Appeal No. 819 of 2015)
For the Appellant/s : Mr. Shravan Kumar, Sr. Advocate

		Mr. Dinesh Maharaj, Advocate
For the State	:	Mr. Ashutosh Ranjan Pandey, AAG-15.
		Mr. Amarendra Kumar
For Patna University	:	Mr. Md. Nadim Seraj, Advocate

(In Letters Patent Appeal No. 1077 of 2015)

For the Appellant/s	:	Mr.Dinesh Maharaj
For the Respondent/s	:	Mr.

==

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 16-01-2019

Heard Mr. Shravan Kumar, learned senior counsel appearing on behalf of the appellant in the two Appeals assisted by Mr. Dinesh Maharaj. Mr. Nadeem Seraj appears on behalf of the Patna University in each of the two Appeals, the State is represented by learned State counsel and Ms. Kanak Verma, learned Central Government counsel appears for the Government of India in the two Appeals.

Two writ petitions, raising identical issues were heard analogous and dismissed by a common Judgment and Order dated 15.01.2015 of the learned Single Judge which has given rise to the present set of Appeals.

The writ petitioners are the appellants in the two appeals and claim pensionary benefits from the University under the old scheme although they have been provided with the benefit of Contributory Provident Fund apart from the other benefits admissible to them i.e., gratuity, leave encashment etc. The bone of contention and dissatisfaction shown by the two appellant-petitioners is that, since the scheme under which they were appointed framed by the Government of India in its Ministry of Health and Family Welfare as the funding agency executed through the University, a copy of which is Annexure-14 to the writ petition, allowed same service conditions including pay to the petitioners as applicable to the University employees, they were entitled to the same retiral benefits as admissible to them.

Mr. Shravan Kumar, learned senior counsel while admitting that the University has provided the petitioners with the benefits to which they were found entitled under the scheme present as Annexure 14, which was at par with the service condition applicable to the University employees including pay-scale, promotions, gratuity, leave encashment etc. submits that when it came to allowing them the benefit under the pension scheme, the same has been denied and the appellant-petitioners have been allowed the benefit of Contributory Provident Fund which has not been accepted by the appellants-writ petitioners.

The short submission made by learned senior counsel is that once the scheme and its conditions envisages that the service condition applicable to the employees appointed under the scheme would be the same, as those governing the University employees, even if at the stage of enforcement of the scheme in 1965, the establishment of the Patna University was non-pensionable, it became pensionable in 1978 under amended statutes. He submits that since these appellant-petitioners were appointed consequent upon the enforcement of the Pension Rules in the University, they are entitled for the same benefits.

Mr. Nadeem Seraj for the University and Ms. Kanak Verma, learned counsel appearing for the Government of India contesting the prayer made by the appellant-petitioners submit that the scheme was temporary and even if it has continued, yet it is under the plan head and thus liable for closure at any time. According to learned counsel, whatsoever service benefit and / or post retiral benefits for which these appointees are aiming at, has to be given in concurrence with the Finance Ministry.

Mr. Nadeem Seraj, learned counsel appearing for the University has invited the attention of this Court to a recommendation of the University dated 29.1.2003 which is enclosed as Annexure 'T' to the reply filed on behalf of the respondent No.5, i.e., the Ministry of Health and Family Welfare, Government of India to submit that the University had recommended the claim of the employees for extending the triple benefit scheme to the employees appointed under the scheme at the Demographic Research Centre now known as Population Research Centre, but this recommendation was rejected by the Government of India vide its letter dated 5.7.2006 at Annexure 'U' to the said affidavit in the light of the opinion received from the Statistics Division. He thus submits that since the financial liability for the continuance of the scheme is to be borne by the Government of India, any facility beyond the scheme has to be with their approval because these appellants are not appointees of the University and thus no claim can be raised by them against the University.

Mr. Shravan Kumar learned senior counsel has tried to refer to certain orders passed by other High Court(s) to submit that such liability has been fastened on the University and State Governments concerned have been directed to bear the responsibility but we are in respectful disagreement with any such opinion expressed by other High Courts because in our considered opinion, Courts have to be slow in forcing liability in financial matters. The situation however is quite different in the present case because the funding agency i.e. the Government of India has refused to bear the financial and to provide funds for liability the triple benefit scheme which in turn provides for payment of pension.

Learned Single Judge has taken note of this very circumstance where the petitioners were neither the employees of the University, nor the Government of India came forward to accept the recommendations of the University to allow them the triple benefit scheme, proceeded to dismiss the writ petition. We concur with view of the learned Single Judge which is in tune with the settled legal position.

These Appeals are accordingly dismissed. It goes without saying that if the Contributory Provident Fund amount and/ or any other dues, has not been paid to the petitioner, even if by their own conduct, the University would process and make payment of the same expeditiously and preferably within six weeks of receipt / production of a copy of this judgment.

(Jyoti Saran, J)

sanjeev/-

(Arvind Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20/02/2019
Transmission Date	NA