

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.857 of 2018

In
Civil Writ Jurisdiction Case No.16296 of 2017

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Arwind Kumar Singh, Son of late Sahajanand Singh, Resident of Village-
Rahimpur, Police Station- Khagaria, District- Khagaria.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
New Secretariat, Vikash Bhawan, Bailey Road, Patna
2. The Vice-Chancellor, Kameshwar Singh Darhanga Sanskrit University,
Kameshwar Nagar, Darbhanga.
3. The Registrar, Kameshwar Singh Darbhanga Sanskrit University,
Kameshwar Nagar, Darbhanga.
4. The Principal , Awadh Bihari Sanskrit Mahavidyalay, Rahimpur, Khagaria.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Siya Ram Shahi, Advocate Mr. Ranjan Kumar Singh, Advocate
For the University	:	Mr. Awadhesh Prasad Singh, Advocate
For the State	:	Mr. Shashi Shekhar Tiwary, A.C. to AAG-15

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-04-2019

Re: I.A. No. 5651 of 2018

Heard Shri Siya Ram Shahi, learned counsel for the
appellant, Shri Awadhesh Prasad Singh, learned counsel for the
University and Shri Shashi Shekhar Tiwary, learned Assistant
Counsel to Additional Advocate General No. 15 for the State.

2. The appeal is reported to be delayed by 4 days.

3. We have considered the affidavit filed in support of



the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 6551 of 2018 stands allowed accordingly.

Re: L.P.A. No. 857 of 2018

The appellant claims his emoluments on the post of Assistant Librarian in Awadh Bihari Sanskrit College, Rahimpur, which is now a constituent college of Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.

2. It appears that the appellant was not being paid his salary, as a result whereof C.W.J.C. No. 3746 of 2000 was filed that was disposed of on 30th of March, 2006 clearly recording that the petitioner was working against a post which had not been sanctioned by the State Government nor necessary fund by the State had been released in favour of the University. However, the Court found that the appellant was being continued and work was being taken from him. Therefore, the liability of payment of salary was on the University and consequently the University was directed to pay the salary to the appellant for the period in a phased manner as indicated in the



judgment dated 30th March, 2006.

3. The appellant again came up before this Court in C.W.J.C. No. 2835 of 2004 that was disposed of on 23rd of June, 2009 with a direction to the authorities concerned to consider the representation of the appellant in relation to his claims pertaining to his status of service and other payment of emoluments.

4. An order was passed on 5th of December, 2011 by which the representation of the appellant was rejected and the same was again challenged by the appellant in C.W.J.C. No. 15231 of 2012. The Principal Secretary of the Education Department was directed to examine this disputed question of fact about the status of sanction and the procedure adopted for the appointment of the appellant vide judgment dated 28th January, 2014.

5. It is the admitted position as on today that no communication has been received from the said authority in respect of the aforesaid claim of the appellant. The appellant has already superannuated and he was not paid his pensionary benefits as well as other emoluments, but from the record it appears that a letter was dispatched by the Principal of the Institution seeking permission from the University for making



payment of Provident Fund amount that was available in a particular account to the tune of Rs. 1,06,534/-. It is the case of the appellant that till date neither the University has granted permission nor the college has made the payment.

6. It is in this background that the writ petition giving rise to the present appeal namely, C.W.J.C. No. 16296 of 2017 was filed claiming the post retiral benefits as well as the payment of G.P.F. amount. The writ petition was disposed of with liberty to the appellant to approach the appropriate forum treating his claim with regard to his status of employment and salary etc. to be premature in the absence of any decision by the Principal Secretary, Department of Education, as directed by this Court in the earlier judgment, but with regard to payment of Provident Fund, a direction was issued that the payment should be made within four weeks. However, the Court did not decide as to which authority has to make the payment as the same would require verification of original records etc.

7. This appeal has been filed contending that the appellant is entitled to all such benefits arising out of his service which he has rendered in the College and merely because the Principal Secretary, Education has not decided the matter, the same does not deprive the appellant of his claim with regard to



payments to which he is entitled, inasmuch as, the University itself has acknowledged the regular services of the appellant and payment of salary was ensured after the judicial intervention of this Court. It is in this background the appellant claims that he should be treated to be a regular employee and consequently he should also be extended the pensionary benefits after his retirement.

8. Having considered the submissions raised and having perused the records, the fact remains that the status of employment of the appellant against the sanctioned post still remains disputed. The same was directed to be considered by the Principal Secretary, Education, but as informed to the Court, no such intimation has been received so far.

9. In the above background, the learned Single Judge cannot be said to have committed any error in treating the matter to be premature, but at the same time, the direction issued by this Court for deciding the controversy has not been complied with. It is stated at the Bar that a contempt application has been instituted before this Court, but the same has not yet been taken up even after the defects having been removed and the matter has not been heard by the Court as yet.

10. In the above background, and instead of



prolonging the litigation any further, we direct the Principal Secretary, Education to forthwith comply with the earlier directions and inform the appellant about the status of his employment by passing an appropriate order within two months from today, provided the petitioner-appellant furnishes a certified copy of the said order before the said authority.

11. Insofar as the payment of Provident Fund is concerned, we direct the University to take notice of the letter dated 22nd July, 2014 said to have been dispatched by the Institution to the University seeking permission in this regard. The University will pass an appropriate order within a period of six weeks from the date of presentation of the certified copy of the order before it and thereafter the College shall proceed to act accordingly. In the event it is found that the appellant is entitled to the payment of Provident Fund upon verification as claimed and as indicated in the letter dated 22nd July, 2014, the same shall be paid to the appellant forthwith without any further delay. The question of other post retiral benefits or any other benefits would, however, be subject to any orders being passed by the Principal Secretary, Education. The appellant shall be filing all his supporting documents regarding his claim before the Principal Secretary, Education.



12. The appeal stands disposed of with the
aforesaid directions.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Jagdish/-

AFR/NAFR	
CAV DATE	
Uploading Date	03.04.2019
Transmission Date	

