

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4772 of 2019

Prof. Ram Nandan Prasad Sinha S/o Late Bindeshwari Prasad Sinha Resident
of Mohalla- V-34, Vidyapur, P.O.- Lohianagar, P.S.- Kankarbagh, District-
Patna

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Higher Education, Govt. of Bihar, Patna
2. The Vice-Chancellor, Patna University, Patna
3. The Registrar, Patna University, Patna
4. The Hon'ble Chancellor, His Excellency, the Governor of Bihar, Raj Bhawan, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rama Kant Sharma, Sr. Advocate Mr.Lakshmi Kant Sharma, Adv.
For the Respondent/s	:	Mr.Madanjeet Kumar (GP20)

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

17 15-10-2020 Heard both sides through video conferencing.

The petitioner moved this Court for a direction to the respondent Nos.2 and 3, Vice-Chancellor, Patna University, Patna and the Registrar, Patna University, Patna to grant retiral benefits to the petitioner under General Provident Fund-cum-Pension-cum-Gratuity Scheme as the petitioner put 24 years of service in Patna University and fulfill all the criteria for grant of pension.

The petitioner by way of filing I.A. further seeks to quash the order dated 16.04.2019 passed by the Vice-Chancellor, Patna University as contained in Memo No.7800 dated 27.05.2019 holding that the lien of the petitioner was also



terminated in the year 1982 and thus, the petitioner is not entitled for any pensionary benefit.

The brief facts which is relevant and admitted is that the petitioner joined on the post of Lecturer in the Department of Geography, Patna University, Patna in July, 1956. The petitioner was promoted to the post of Reader on 01.03.1974 and he worked uptill 1980 on the post of Reader. The petitioner was granted extraordinary leave vide Memo No.15730-38 Patna dated 11.08.1980 with a permission to hold lien on the post held by the petitioner i.e. Reader in the Department of Geography in Patna University for two years w.e.f. the date he is relieved to join his new assignment as Professor of Geography Maharaja Sayajirao University, Baroda(Annexure-1). The petitioner was selected and appointed on the post of Professor at Maharaja Sayajirao University, Baroda, Gujarat and he remained and worked there as Professor till the date of his retirement from Maharaja Sayajirao University, Baroda in July, 1992. When the petitioner did not join on the post which was held by him on lien and he was confirmed on the post of Professor in the Department of Geography in Maharaja Sayajirao University, Baroda, Patna University vide Memo No.1055 dated 14.01.1983 terminated the lien of the petitioner w.e.f. 16.08.1982.



The question arises for consideration “whether the petitioner who worked in Patna University on the post of Lecturer and Reader in the Department of Geography for 24 years till 16.08.1980 i.e. the date on which he went on lien to join on the post of Professor in Maharaja Sayajirao University, Baroda and worked on permanent post of Professor in Maharaja Sayajirao University, Baroda even after termination of his lien w.e.f. 16.08.1982 vide letter as contained in Memo No.1055 dated 14.01.1983 till the date of his retirement in the month of July, 1992 is entitled to get pensionary benefit under the Statutes for grant of retirement benefits to the employees of the University?”

Mr. Rama Kant Sharma, learned senior counsel for the petitioner submits that the petitioner was working on the post of Reader in the Department of Geography at Patna University and he went to join after being selected on the post of Professor with permission to hold lien uptill 16.08.1982 in Maharaja Sayajirao University, Baroda. The petitioner was permanently absorbed on the post of Professor and his lien was terminated by the Patna University vide Memo No.1055 dated 14.01.1983 w.e.f. 16.08.1982. The petitioner retired in the month of July, 1992. It is submitted that petitioner filed representations on 09.08.1983,



12.11.1983, 25.04.1984 and 26.05.2005 against the termination of his lien by the Patna University. The petitioner filed C.W.J.C. No.14220 of 2007 which was disposed of on 24.07.2009 with liberty to the petitioner to file an appeal before the Hon'ble Chancellor. The Hon'ble Chancellor's office issued direction to the Vice-Chancellor of Patna University to decide the issue raised by the petitioner in Appeal No.44 of 2016. During the pendency of this writ petition, the claim of the petitioner was rejected on 16.04.2019 and communicated to the petitioner vide Memo No.7800 dated 27.05.2019. It is submitted that Vice-Chancellor has illegally held that the lien of the petitioner was terminated and, therefore, in view of termination of the lien of the petitioner after 16.08.1982, Section 24(b) of Patna University Statutes provides that the provisions of Bihar Pension Rules shall be applicable when there is no specific provision in the Rule of the University. Rule 103 of Bihar Pension Rules says that if a person remained absent unauthorisedly, the past service of such person shall be forfeited and such person shall not be entitled for any benefit under the Pension Rules. It is submitted that petitioner was never dismissed from service nor he resigned but lien has been terminated without giving any notice to the petitioner. It is



submitted that lien cannot be legally terminated without giving notice to the petitioner and it has also been held by this Court in 2004(1) PLJR 13 and 1990(2) PLJR 577. It is further submitted that in context with the Rule 71(B) read with Rule 70(2) of Bihar Service Code, it has been held that without giving notice, the lien cannot be terminated. It is submitted that Section 64(B) of Patna University Act provides for qualifying service of pension and ten years service is required for grant of pension. It is further submitted that Prof. K.K.Jha, Department of Mathematics and Dr. L.N.Ram, Department of Geography whose cases stand similar to that of the petitioner were granted pensionary benefits under the Statutes.

Respondent Nos.2 and 3 filed counter-affidavit. Mr. Nadim Seraj, learned counsel for the Patna University with reference to the counter-affidavit submits that petitioner's claim for pensionary benefits after his retirement from M.S. University, Baroda is not legally tenable. The petitioner was in service from the month of July 1956 to 15th August, 1980 in the Department of Geography, Patna University, the petitioner has not exercised any option in terms of the Statutes and, therefore, the petitioner is not entitled to get benefit under General Provident Fund-cum-Pension-cum-Gratuity Scheme. It is



submitted that Vice-Chancellor in deference with the directions of the Hon'ble Chancellor dismissed the appeal of the petitioner on 16.04.2019 holding that the petitioner is not entitled to get any pensionary benefit as his lien was terminated as far back as on 16.08.1982 and thereafter he never remained in service in Patna University. The petitioner withdrew his contributory provident fund amount immediately after termination of his lien w.e.f. 16.08.1982 vide his C.P.F. Account No.PG(Geog)-78 on 16.04.1987 and, therefore, after voluntarily withdrawal of the entire C.P.F. fund after termination of lien and his option of CPF scheme amounts to his acceptance and, therefore, the petitioner is not entitled to get any pensionary benefit after 23 years of his termination of lien and he cannot be allowed to exercise his option of switching over from CPF scheme to GPF scheme as he was not in service in the Patna University on the date of his retirement. It is further submitted that order of the Vice-Chancellor, Patna University clearly held that in view of the provisions of Rule 24(b) of Chapter II of the Statutes which says that Bihar Pension Rules, will apply, as amended from time to time, in all matters not covered by the preceding Rules so far as it relates to procedure regarding grant/payment of pension/gratuity is concerned. Rule 103(b) of Bihar Pension



Rules says that an interruption in the service of Government servant entails forfeiture of his past service except in the case where (a) authorised leave of absence (b) unauthorised absence in continuation of authorised leave of absence so long as the post of the absentee is not substantively filled, if his post is substantively filled, the past service of the absentee is forfeited. It is further submitted that Ram Ashray Yadav similarly situated Professor, Patna University filed C.W.J.C. No.18200 of 2016 and his case was rejected on the same ground. Ram Ashray Yadav preferred LPA No.516 of 2018 and the same was also dismissed vide judgment and order dated 07.01.2019, therefore, the petitioner is also not entitled to get pensionary benefit. The case of the petitioner was not similar to that of Prof. K.K.Jha and Prof. L.N.Ram as they were in continuous service of the University and they exercised their option of switch over from CPF scheme to GPF scheme in proper time.

Statutes for the grant of retirement benefits to the employees of Bihar including Patna University was approved by the Chancellor vide Letter No.BSU 52/80-5285 G.S.(I) as amended by letter No.BSU/52/80/2158 GS(I) dated 25.11.1982. Section 3 provides for the application of Statutes to the teaching and non-teaching staff of the University as also to such



employees to the constituent colleges of the University who were in service on 01.04.1972 or joined service after that date. Section 4 and 4A prescribed for exercise of option in writing to the Registrar within three months of the date of such notification and the option once exercised shall be final. Section 4B is amended by the Hon'ble Chancellor after due consideration of the recommendation of the State Govt. vide letter No.14/83-95-98-3 1285 dated 16.11.2005 as contained in Memo No.AC/PF/192 Patna dated 11.02.2006.

Section 4B is very relevant for the purpose that one time option was given to the retired employees of the University even after exercising option under Sections 4 and 4A of the Statutes. Section 4B reads as follows:

“Notwithstanding anything to the contrary as contained in the Statutes for the grant of retirement benefits, approved by the Chancellor, vide Letter No.PU 86/80-5284-GS(1) dated 18.11.1980 as amended by Letter No.BSU/52/80/2158 GS(I) dated 25.11.1982 (in force from 14.11.1980), it is hereby provided that all the employees to whom these Statutes apply and who joined service of the University Constituent colleges before 1st April, 1978 and are still in service or have retired and provided with fresh option after the cut off date fixed in earlier



Statutes and have already given their option to the University shall be given the benefits of scheme set out in Appendix-A of the retirement benefits Statutes. Provided further that the University shall not provide fresh option henceforth in any case otherwise the expenditure so incurred as a result thereof, shall be realised from the concerned persons as a public demand under the provisions of Public Demands Recovery Act, 1914.”

From perusal of the aforesaid amended provisions, it is apparent that the fresh opportunity was given to all such employees to whom those Statutes applied and who joined service of the University constituent colleges before 1st April, 1978 and are still in service or have retired and provided with fresh option after the cut off date fixed in earlier Statutes and have already given their option to the University shall be given the benefits of the scheme set out in Appendix-A of the retirement benefits Statutes. Admittedly, the petitioner entered into service in the year 1956 and he went on lien after grant of extraordinary leave with permission to remain on lien on the post of Reader, Department of Geography w.e.f. 16.08.1982 for two years but even after lapse of two years, the petitioner did not join nor informed the University about his intention to hold the lien or grant of further extraordinary leave with permission



to hold lien but the petitioner was permanently appointed on the permanent post of Professor in Maharaja Sayajirao University, Baroda, Gujarat from where he retired in the month of July, 1992. The University terminated the lien of the petitioner w.e.f. 16.08.1982 and on the post the petitioner was holding lien, a new incumbent was appointed on the recommendation of the Bihar Public Service Commission. The petitioner did not challenge the order of termination of lien of that post till his retirement from the post of Professor from Maharaja Sayajirao University, Baroda, Gujarat. Although the petitioner has stated that he sent several representations about his lien but he did not annex any such petition showing any representation filed by him before the competent authority. It is also apparent from the facts that the petitioner withdrew his entire amount of C.P.F. account lying in the Patna University in the year 1987 itself and I find from all these facts that the petitioner being appointed on the post of Professor i.e. higher post from the post of Reader, on which the petitioner was working in the Patna University, relinquished the post and intentionally he did not challenge the order of termination issued on 14.01.1983 terminating the lien of the petitioner from the post of Reader, Department of Geography, Patna University w.e.f. 16.08.1982, therefore, at



this belated stage, the claim of the petitioner for holding the lien or to remain in the service of Patna University cannot be accepted. The facts of the judgments on which the petitioner placed his reliance are quite different and not applicable in the case of the petitioner. I further find from perusal of the provisions as contained in Section 24(b) of the Statute for grant of retirement benefit that where there is no specific provisions in the Statute of the University, the rules of Bihar Pension Rules shall be applicable. Rule 103(b) of Bihar Pension Rules speaks that an interruption in the service of a Government servant entails forfeiture of his past service except in the case where (a) authorised leave of absence (b) unauthorised absence in continuation of authorised leave of absence so long as the post of the absentee is not substantively filled, if his post is substantively filled, the past service of the absentee is forfeited.

I find that the petitioner firstly went on extraordinary leave with permission to hold lien on the post of Reader, Department of Geography, Patna University w.e.f. 16.08.1980 for two years in order to join the post of Professor after the petitioner being selected for that post in Maharaja Sayajirao University, Baroda, Gujarat. The petitioner joined on the post of Professor in Maharaja Sayajirao University, Baroda and even



after lapse of two years, the petitioner did not make any communication for extension of his leave with permission to hold lien and eventually the lien of the petitioner was terminated w.e.f. 16.08.1982 vide order dated 14.01.1983 as contained in Memo No.1055-62. Since the petitioner was working permanently on the permanent post of Professor in Maharaja Sayajirao University, Baroda, Gujarat, he withdrew his entire amount lying in his C.P.F. account. After termination of lien by the University, as contained in Memo No.1055-62 dated 14.01.1983, the petitioner withdrew his entire CPF amount. This fact patently shows the intention of the petitioner that he opted for CPF scheme of the Statute and accordingly withdrew the entire amount and severed his relation with the University. Therefore, the contention of the learned counsel for the petitioner that he did not give option to choose any of the scheme as provided under the Statutes amounts to choosing GPF scheme cannot be accepted. The petitioner left the service of Patna University after termination of his lien before the implementation of the Statutes as amended on 25.11.1982 and he also withdrew his entire amount deducted from his salary and equal amount contributed by the University in his CPF account. Therefore, after amendment and insertion of Section 4B, the



petitioner cannot be allowed to opt the GPF scheme of the Statute after more than 25 years of leaving the service of the University and the petitioner is not entitled to get pensionary benefit as provided under Appendix A of the Statutes. Thus, I do not find any illegality in the order of the Vice-Chancellor rejecting the claim of the petitioner for grant of pensionary benefit. This Court in the case of Ram Ashray Yadav in C.W.J.C. No.18200 of 2016 vide order dated 14.03.2018 has clearly held that the petition for grant of pensionary benefit under the amended provisions of the Statute after many years is not tenable and rejected the claim of Mr. Ram Ashray Yadav. The same order was also confirmed by a Division Bench of this Court vide order dated 07.01.2019 passed in L.P.A. No.516 of 2018.

Having considered the facts and discussions made above, I find no merit in this writ petition. Accordingly, this writ petition is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

U			
---	--	--	--

