

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19706 of 2015

=====

Dr. Choudhary Raj Rajeshwari Prasad Singh, S/o Late Shiv Mangal Singh,
Resident of Village- Gangati, P.S.- Dawath, District- Rohtas, presently a
retired Reader in Physics, Sri Shanker College, Sasaram Petitioner/s
Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Department, Govt. of Bihar,
Patna
3. The Director Higher Education, Principal Secretary, Human Resources
Department, Government of Bihar
4. The Veer Kuwar Singh University, Ara through its Registrar
5. The Vice Chancellor, Veer Kuwar Singh University, Ara
6. The Registrar, Veer Kuwar Singh University, Ara
7. The Principal Sri Shanker College, Sasaram
8. Hon'ble Mr. Justice S.N. Jha Retd One Man Committee for university
Teachers, Bihar Text Book Publi

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Tara Nath Jha, Advocate
For the State	:	Mr. Manoj Kumar, AC to GP-4
For the University	:	Mr. Rajesh Prasad Choudhary, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 24-02-2020 Heard learned counsel for the petitioner and Mr.

Rajesh Prasad Choudhary, learned counsel appearing on behalf

of the University.

The issue involved in the writ application is whether
the Committee constituted by the High Court in terms of the
order of a writ Court can supersede and override the judgment
rendered by two Division Benches of this Court. Admittedly, the
authority of the Commission constituted under the order of the
High Court cannot rise higher than the judgment of the Division



Bench which has attained finality.

The Petitioner is aggrieved by the decision of the Mr. Justice S. N. Jha (Retd) Committee in case no. 70 dated 18.09.2015.

Counsel for the petitioner would submit that the Committee having limited jurisdiction as the Committee was constituted as Fact Finding Committee to assist the Court and as such it has absolutely no jurisdiction to sit in appeal against the judgment rendered by the two Judges Division Bench of this Court which is final and binding inter parte. The petitioner has placed reliance on certain document in support of his claim. Relevant document for the purpose of deciding the writ application challenging the notification includes Annexure-2 dated 28th August, 1982 which noted the date of appointment of the petitioner as 29.11.1978.

Learned counsel has drawn attention of this Court to the order passed in CWJC No. 609 of 1987 wherein the Division Bench of this Court has taken into consideration the notification of the University dated 28th August, 1982 and the notification of the Chancellor and the Division Bench has held out on the stand taken by the Advocate General that the notification of the Chancellor should supersede the notification issued by the



University. The relevant part of the order dated 26.03.1987 in CWJC No. 609 of 1987 by Division Bench is quoted below:-

“Today the learned Advocate General appearing for the respondent university informed the court that cheque no. 004785 dated 13.3.87 covering the salary for the period May, 1977 to Nov. 1978 has been forwarded to the principal of Shri Shankar College in question. I direct the principal to make payment to the petitioner for the period from May 1977 to November 1978 within two months from the date of the production of this order.

On behalf of the petitioner it was urged that in spite of the direction of the Chancellor and Vice-Chancellor to treat the petitioner on duty for the period aforesaid no fresh notification has been issued. It was pointed out that earlier a notification has been issued by the university treating the petitioner in service with effect from 29.11.78. In view of the order passed by the



Chancellor and Vice-Chancellor mentioned above, the notification will be deemed to have been superseded and there should be no apprehension on the part of the petitioner.

The writ petition is accordingly disposed of.”

Following the decision in CWJC No. 609 of 1987, the University issued notification rectifying the date of continuity of service of the petitioner w.e.f. 05.08.1973 vide its notification dated 2nd December, 1987 (Annexure-4).

It appears that the petitioner had once again approached this Court by CWJC No. 8182 of 1988. In the said writ application, the predecessor of the Veer Kuwar Singh University, i.e. Magadh University, was party. The Division Bench on consideration of the order passed in CWJC No. 609 of 1987 and the notification of the Hon’ble Chancellor held out that petitioner has been in continuous service of the college from 05.08.1973 for all purposes. Petitioners, therefore, are entitled to their due emoluments, fixation of salary etc. and determination of other service conditions accordingly. We have no hesitation, therefore, in directing the respondents to forthwith take up the petitioner’s case for fixation of pay and



determination of other service condition and complete all the formalities within a period of three months.

It is to be noted here that neither the decision of CWJC No. 609 of 1987 nor the decision in CWJC No. 8182 of 1988 was challenged and both the Division Bench Judgment was allowed to attain finality. Not only that the respondent University has also acted upon the aforesaid two judgment, unfortunately, the petitioner was compelled to join litigation in third round in CWJC No. 8417 of 1989. Again the writ Court has occasion to examine the entitlement of the petitioner for counting his service and having regard to the previous decision, the writ Court once again held out that the petitioner shall be entitled to count his service w.e.f. 05.08.1973.

It appears from Annexure-10 that Veer Kuwar Singh University also issued a notification on 29.01.2000 wherein the University has noted 05.08.1973 as commencement of the service of the petitioner. When the petitioner was denied the follow-up of the decision of the writ Court and the notification issued from time to time by the University, the petitioner approached this Court in 12019 of 2008. The writ Court relegated the petitioner to approach the forum of Justice S. N. Jha Commission. Relevant part of the order dated 01.09.2014 is



quoted below:

“The Court does not feel any difficulty on a fair position taken by the counsel for the petitioner that atleast he should be paid retiral dues on the basis of the date of appointment fixed by the University.

If there is any dispute, which remains with regard to the actual date of appointment or shifting the date of appointment by subsequent decision of the university or the claim of the petitioner as to what exactly should be the date that is going to be adjudicated in a separate proceeding.

In the first paragraph the Court has noted that it does not feel any difficulty on a fair position taken by the counsel for the petitioner that atleast he should be paid retiral dues on the basis of the date of appointment fixed by the University.

The second part of the order reads that if there is any dispute, which remains with regard to the actual date of appointment or shifting the date of appointment by subsequent decision of the university or the claim of the petitioner as to what exactly should be the date that is going to be adjudicated in a separate proceeding.

At this juncture, the Court feels it necessary to clarify



that the Commission was constituted by the writ Court to assist the Court and record fact finding. The jurisdiction of the Commission was only to record the fact finding and not to sit in appeal against the judgment rendered by Judges Division Bench in earlier proceeding which has attained finality as no appeal was preferred against the two Division Bench judgments discussed herein above.

The matter was examined by Justice S. N. Jha (retd) Committee. The Committee has read the Division Bench judgment and the judgment rendered by the writ Court and held out that the University has misconstrued the order. In other words, the Commission has interpreted the order which was inter parte binding and final between the parties.

Mr. Rajesh Prasad Choudhary, learned counsel for the University has drawn attention of this Court to Annexure-11 and 12 to contend that in terms of Annexure 11 and 12 there was occasion to reopen the matter. The Court is unable to accept the contention of Mr. Choudhary as it would be an absurd proposition that executive order can reopen the matter which has attained finality in a judicial proceeding.

After going through the order, the Court is of the considered view that what transpired between the petitioner and



the University after the order of the two Judge Division Bench was not open to fresh interpretation by the Commission constituted under the order of this Court. The order of reopening the date of absorption of the petitioner is totally without application of mind and fixing the seniority from 01.01.1981 by the Justice S. N. Jha Committee is without jurisdiction for two reasons. Firstly, that the Committee was only required to submit report and was not competent enough to decide the date while submitting report inasmuch as instead the Commission has exercised the adjudicatory power which was never vested to the Commission. Secondly, the Commission having limited jurisdiction cannot sit in appeal against the decision of the Division Bench which has attained finality. For the two reasons stated herein above, the order dated 18.09.2013 is quashed. The respondents are directed to treat the initial date of appointment of petitioner as 05.08.1973 and grant all consequential benefits.

Accordingly, the writ application is allowed and respondents are directed to take necessary steps in this regard at the earliest preferably within a period of three months from the date of receipt/production of a copy of this order.

Rishi Kumar/-

U			
---	--	--	--

(Anil Kumar Upadhyay, J)

