

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20046 of 2019

=====

Birendra Prasad Son of Late Kapildeo Prasad Resident of Mohalla- Sri Krishnapuri, Ward No.5, H/o Dilip Kumar Verma P.O.- Kashipur, P.S.- Samastipur, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, (Higher Education) Department, Government of Bihar, Patna.
2. The Director, (Higher Education), Government of Bihar, Patna.
3. The Director, Rural Institute of Higher Studies at Birauli, P.S.- Pusa, District- Samastipur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Kripa Nand Jha, Advocate
For the State of Bihar	:	AC to SC 13
For the Respondent no. 3:		Mr. Sasi Bhusan Singh, Advocate
For the Accountant General:		Mr.Kumar Priyaranjan, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 01-09-2020

Heard learned counsel for the petitioner and learned counsel for the respondents through video conferencing.

The petitioner has filed the instant application for directing the respondents to pay the entire retiral dues i.e. earn leave, group insurance, pension, gratuity, difference of salary in 6th PRC, provident fund and the benefit of 2nd and 3rd ACP admissible to the petitioner along with 10% interest thereon till the date of its actual payment and for other reliefs.

It is submitted by learned counsel for the petitioner that the Rural Institute of Higher Studies at Birauli, Samastipur was established in the year 1955 and is fully controlled and managed by the Higher Education Department, Government of Bihar. The petitioner was appointed as a lecturer in Chemistry in



the year 1978 and was made to retire vide order passed on 12.4.2018 (Annexure-2) with effect from 30.4.2012. It is further submitted that the petitioner was also made the In-charge Director of the Institute from 1.2.2012 to 27.11.2013. It is further submitted by learned counsel for the petitioner that although no dues certificate has been issued in favour of the petitioner by the Institute in the year 2017 itself, in spite of filing several representations no steps have been taken by the respondents and the petitioner has still not been paid his retiral dues and as such the instant writ application. Learned counsel for the petitioner has further placed reliance on the judgment dated 30.1.2014 (Annexure-4) passed in C.W.J.C. no. 22962 of 2012 and analogous cases holding that the Service Condition Rule, 2004 of the Rural Institute, Birouli, Samastipur shall not have any retrospective effect and the petitioners herein would be entitled to get their retiral dues from the respective date of their retirement. Learned counsel has also placed on record the orders dated 7.1.2015 (Annexure-5) passed in LPA no. 1269 of 2014 affirming the order as contained in Annexure-4 and holding the State of Bihar to be under obligation to pay pension/family pension. The petitioner has also placed reliance on the order dated 4.2.2019 (Annexure-7) passed in LPA no. 8 of 2015 and analogous cases whereby the order passed in CWJC no. 22962 of 2012 was affirmed.

Counter affidavit has been filed on behalf of the respondent nos. 1 and 2 and a separate counter affidavit has been filed on behalf of the respondent no. 4. The petitioner has filed his reply to the counter affidavit of respondent nos. 1 and 2.

Having heard learned counsel for the petitioner and



learned counsel for the respondents, it may be stated here that by the order contained in Annexure 4, the learned Single Judge while hearing CWJC no. 22962 of 2012 and analogous cases has held as follows :-

“.....As I have already discussed that petitioners were appointed by the Government before registration of aforesaid institute as Society and para 6 of the Service Condition Rule, 2004 of the Rural Institute, Birouli, Samastipur does not have any retrospective effect and, therefore, the aforesaid para 6 of the Service Condition Rule, 2004 of the Rural Institute, Birouli, Samastipur shall not apply in respect of the petitioners and, therefore, petitioners are entitled to get their retiral dues from the respective dates of their retirement.

Accordingly, these writ petitions stand disposed of with direction to respondents no. 2, 4 and 5 to take steps to ensure the payment of retiral dues of the petitioners treating them as government employees within three months from the date of receipt/production of a copy of this order.”

By order dated 4.2.2019 (Annexure-7), this Court dismissed LPA no. 8 of 2015 and analogous appeal preferred against the order passed by the learned Single Judge as contained in Annexure-4. The relevant part of the judgment passed in the appeal is being quoted herein below :-

“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....”

So far as the petitioner herein is concerned, he joined as lecturer in Chemistry in the institute on 13.2.1978 and was made to retire from his post vide order dated 12.4.2018 with effect from 30.4.2012. Further the respondent nos. 1 and 2 in paragraph nos. 19 and 21 of their counter affidavit have stated that a high level committee was constituted under the chairmanship of the Chief Secretary, Government of Bihar and in view of the recommendation of the committee steps are being taken for payment of the retiral benefits to Vijay Kumar Sharma (petitioner of CWJC no. 19222 of 2019) as also to other similarly situated persons including the petitioners.

Thus, in view of the fact and circumstances of the case, the respondent no. 2/concerned respondent in the Higher



Education Department, Government of Bihar is directed to ensure payment of the entire post retiral dues of the petitioner within a period of three months from the date of receipt of the copy of this order, failing which the petitioner would be entitled for interest of 9% per annum on the dues from the date the same became payable till the date of its actual payment. The respondents would be at liberty to fix responsibility for the delay in payment and to realize the amount paid by way of interest on account of delay, from the erring official.

The writ application stands allowed with the above observations and directions.

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

