

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6672 of 2019

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Devata Devi, aged about 67 years, Gender- (Female), W/o Late Yugal Kishore Mishra, resident of - Sijaulia Godiyari, P.S.- Sijaulia, District – Madhubani.

... .. Petitioner

Versus

1. The State of Bihar through the Director, Higher Education, Govt. of Bihar, New Secretariat, Patna.
2. The Director, Higher Education, Govt. of Bihar, New Secretariat, Patna.
3. The Vice-Chancellor, L.N. Mithila University, Darbhanga.
4. The Registrar, L.N. Mithila University, Darbhanga
5. The Finance Officer, L.N. Mithila University, Darbhanga
6. The Principal, C.M.B. College Deorh, Ghoghardiha, District Madhubani

... .. Respondents

with

Civil Writ Jurisdiction Case No. 7735 of 2019

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Baleshwar Jha, aged about 78 years, Male, son of late Balram Jha, Resident of Rajendra Nagar, Power Hose Road, P.S. and District- Begusarai, a Superannuated Employee as Reader, in the Department of Chemistry, G.D. College, Begusarai.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
2. Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
3. The Director, Higher Education, Govt. of Bihar, New Secretariat, Patna.
4. The Vice-Chancellor, L.N. Mithila University, Darbhanga.
5. The Registrar, L.N. Mithila University, Darbhanga.
6. The Finance Officer, L.N. Mithila University, Darbhanga.
7. The Principal, G.D. College Begusarai, District- Begusarai.

... .. Respondents

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Appearance :

(In Civil Writ Jurisdiction Case No. 6672 of 2019)

For the Petitioner	:	Mr. Shashi Bhushan Singh, Advocate
For the State	:	Mr. Madhaw Prasad Yadaw, GP-23
For the University	:	Ms. Binita Singh, Advocate

(In Civil Writ Jurisdiction Case No. 7735 of 2019)



For the Petitioner : Mr. Shashi Bhushan Singh, Advocate
For the State : Mr. Madanjeet Kumar, G.P.-20
For the University : Mr. Nadeem Seraj, Advocate
Ms. Alka Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 06-10-2021

Heard learned counsel for the parties.

2. The petitioner of C.W.J.C. No.6672 of 2019 is widow of late Yugal Kishore Mishra, who retired as Reader while serving in C.M.B. College, Deorh, Ghoghardiha, District-Madhubani, a constituent unit of L.N. Mithila University, Darbhanga. He died subsequently. The petitioner of C.W.J.C. No.7735 of 2019 retired as Reader while working in a constituent College of the same University. They have approached this Court by filing these writ applications, seeking direction for payment of arrears of post retiral and other dues.

3. Since both the cases raise common issues, they have been heard together and are being disposed of by present common judgment and order.

4. The common issues involved in both the cases relate to their claims for merger of 50% of Dearness Allowance with pension for the purpose of calculation of monthly pension, payment of compound interest at the rate of 12.5% on the amount of Group Insurance and arrears of Medical Allowance.



5. I have heard Mr. Shashi Bhushan Singh, learned counsel representing the petitioners in both the cases, Mr. Madhaw Prasad Yadav, G.P.-23 and Mr. Madanjeet Kumar, G.P.-20 for the State of Bihar. The University has been represented by Ms. Binita Singh, Mr. Nadeem Seraj and Ms. Alka Verma, learned counsel.

6. In respect of merger of 50% of Dearness allowance with pension for the determination of the amount of monthly pension, the University in its counter affidavit has taken a stand that claim of merger of 50% of Dearness Allowance is not sustainable as per direction of the University Grants Commission. In the counter affidavit, however, the University has not referred to any such direction of the University Grants Commission.

7. In the counter affidavits filed on behalf of the State of Bihar, it has been specifically stated that the State Government vide its resolution contained in memo no.1674 dated 16.08.2012 has extended the benefit of merger of 50% of Dearness Allowance with basic pension with effect from 01.04.2005 to the teaching and non-teaching employees of the Universities in the State appointed in accordance with law against sanctioned and vacant posts and it has revised the



pension with effect from 01.01.2006 with stipulation that actual monetary benefit shall be payable in three annual increments of 15%, 40% and 45% during the financial years 2012-13, 2013-14 and 2014-15. It has been specifically stated in the counter affidavit that the stand taken by the University that merger of 50% of Dearness Allowance with basic pension is applicable to non-teaching employees only is incorrect as both teaching and non-teaching employees are covered by the said resolution. It has further been stated that after implementation of merger of 50% of Dearness Allowance with basic pension, the State Government has released grant of Rs.300 crores vide memo no.2636 dated 25.11.2012 to the Universities for payment of all sorts of arrears accrued on account of pensionary/retiral benefits, arrears of pension and arrears of salary to the employees of the University. The State Government through its affidavit has also brought on record, a letter issued vide memo no.848 dated 24.04.2013 whereby, a sum of Rs. 543,37,75,990/- has been released for payment to its employees towards arrears of pension, post retiral benefits and arrears of salary etc. There is specific statement made in the counter affidavit that it is evident from the communication dated 24.04.2013 that separate amounts have been released for payment of other dues of salary,



pension and post retiral benefits which includes the payment of arrears to the retired employees, accrued due to merger of 50% of Dearness Allowance with basic pension. Further, a sum of Rs. 165,82,73,064/- was released for payment of second installment of 40% to the employees of various Universities due to revision in pension since 01.04.2007. It has also been stated in the counter affidavit that it is upto the concerned University to examine the case of the petitioners for their eligibility to get merger of 50% of Dearness Allowance and if found admissible, pay the same, if not already paid.

8. In view of clear stand taken in respect of entitlement of the employees of the University to get the benefit of merger of 50% of Dearness Allowance with the basic pension in accordance with the resolution of the State Government, as noted above, no dispute in the said regard survives. The petitioners are accordingly, held entitled to get the benefit of merger of 50% of Dearness Allowance for determination of amount of pension in accordance with the resolution of the State Government.

9. The second aspect of payment of interest at the rate of 12.5% on Group Insurance amount is also not much in controversy. The petitioners have relied on a decision of this



Court dated 31.08.2015 rendered in *C.W.J.C. No. 11219 of 2011 (Dr. Shyam Sunder Acharia vs. The State of Bihar and Ors.)* by a co-ordinate Bench of this Court wherein, this Court has required the University to consider the grievance of the petitioner in the light of this Court's decision rendered in the case of *Professor Surender Bahadur vs. State of Bihar* reported in *2006(4) PLJR 369*.

10. It is the petitioners case that other employees of the University have been allowed compound interest at the rate of 12.5% per annum on Group Insurance amount. By way of illustration, an order dated 22.06.2014 passed by the Registrar of the University in case of Savitri Sinha has been brought on record. This Court's attention has also been drawn to a recent communication dated 25.01.2020 whereby, compound interest at the rate of 12.5% per annum on Group Insurance amount has been allowed in case of another employee. There does not appear to be much dispute in respect of payment of Medical Allowance. A copy of resolution dated 06.03.2019 of the Education Department, Government of Bihar, has been brought on record, Clause-9 of which prescribes that the pensioners / family pensioners shall be entitled to Medical Allowance at the same rate as is admissible to employees of the



State Government. It is specific case of the petitioners that a retired State Government employee and his family are entitled to Medical Allowance at the rate of Rs.1000/- per month with effect from 20.10.2017 by virtue of Finance Department's resolution no.754-755 dated 20.10.2017.

11. It is to be kept in mind that the question of merger of 50% of Dearness Allowance with basic pension, had arisen before the Division Bench of this Court. The Division Bench, upon examining Section 35 of the Bihar State Universities Act, 1976, Clause-16 of the Statutes governing retiral benefits of the employees of the University and State Government Circular dated 11.04.2005 specifically held by a judgment and order dated 23.07.2008 rendered in *L.P.A. No.434 of 2008 (Prof. (Dr.) Ram Dinesh Sharma vs. The T.M. Bhagalpur University & Ors.)* that retired employees of the University are entitled to merger of 50% of Dearness Allowance in their basic pension with effect from 01.01.2005.

12. The view came to be reiterated again by the Division Bench in its order dated 23.07.2008 rendered in *L.P.A. No.439 of 2008 (Sudhir Chandra Kumar vs. The T.M. Bhagalpur University)*.

13. Mr. Shashi Bhushan Singh, learned counsel



representing the petitioners, has submitted that there are certain other issues relating to non-payment of the amount under un-utilized earned leave. It appears that the said amount has been paid as it emerges from the counter affidavit filed on behalf of the University.

14. He has argued that the University has adopted arbitrary and discriminatory attitude in the matter of payment of interest on Group Insurance amount. It has been submitted that whereas some of the employees of the University have been paid interest at the rate of 12.5% per annum, others have been denied including these petitioners. He has also submitted that despite their being conclusive pronouncement by this Court on the point of merger of 50% of Dearness Allowance with basic pension, which has attained finality upto the Supreme Court, the respondents, without any valid reason, have delayed extension of benefit arising out of the said judicial pronouncement. He has further submitted that the respondent University has not paid Medical Allowance as admissible to the retired employees of the University.

15. Learned counsel appearing on behalf of the University, on the other hand, have submitted that the petitioners are not entitled to interest at the rate of 12.5% on Group



Insurance amount which is admissible to such employees who retired prior to 01.01.2006.

16. In reply to the said submission, learned counsel for the petitioners has relied on a communication dated 10.08.1985 issued under the signature of the Registrar of the University wherein, reference has been made to decision taken by the Senate of the University on 27.07.1985 that teaching and non-teaching employees shall be given benefit of Group Insurance -cum- Saving Scheme at par with the State Government employees. He has submitted that in any event, other employees have been paid interest at the rate of 12.5% per annum.

17. Learned counsel for the University have also raised issue relating to non-availability of fund for payment against various heads to the teaching and non-teaching employees of the University. They have contended that once the fund is released, the University shall be in a position to make payments.

18. Considering the facts and circumstances, as noted above, I am of the view that the respondent University cannot delay any more payment of arrears arising out of benefit of merger of 50% of Dearness Allowance with the basic



pension/family pension of the petitioners in the light of the Division Bench decision in the case of *Prof. (Dr.) Ram Dinesh Sharma* (supra) which has been subsequently affirmed by the Supreme Court and subsequent resolution of the State Government in this connection, as noted above. The Registrar of the University is directed to ensure that the petitioners are paid arrears of pension/family pension upon granting them the benefit of merger of 50% of Dearness Allowance within a period of two months from the date of receipt/production of a copy of this order. Since there is no valid justification for delay in payment of arrears against this head, the University shall be required to pay to the petitioners interest at the rate of 6% per annum from the date the said amount become due till its actual payment.

19. In respect of interest on Group Insurance amount, the respondent University is directed to pay to the petitioners interest at the rate of 12.5% which has been paid to other employees as has been asserted by learned counsel for the petitioners referring to the documents which have been brought on record.

20. The Registrar of the University is further directed to ensure payment of Medical Allowance to the



petitioners, as admissible to them, within a period of two months from the date of receipt/production of a copy of this order.

21. At this juncture, the Court takes note of submission made on behalf of the University that the State Government while releasing the fund to the University incorporates the heads against which the fund so released is to be utilized. That being the position, the University finds it difficult to utilize the said fund for payment to the employees against the heads other than those mentioned in the letter of the State Government while releasing the funds. They have submitted that it would be convenient to the University to make payment if the State Government permits the University to use the said fund for the purpose of payment of the nature involved in the present case.

22. Be that as it may, the entitlement of the petitioners cannot be withheld in any circumstance. The Court excepts the State Government to issue necessary direction/guidelines in this regard to the University.

23. If any grievance of the petitioners remains unresolved in relation to calculation of arrears of salary against various heads, they shall be at liberty to approach the Registrar



of the University by filing separate representations. If any such grievance is raised by filing representation by the petitioners, the Registrar of the University shall be obliged to consider the same and take a final decision within a period of two months from the date of filing of such representation.

24. These writ applications are allowed with the aforesaid observations and directions.

25. There shall be no order as to costs.

26. The number of order dated 20.09.2021 has been wrongly typed as order no.13 in place of order no.12. The order dated 20.09.2021 shall be treated to be order no.12.

(Chakradhari Sharan Singh, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	09.10.2021
Transmission Date	N/A.

