

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM OFFICIAL CHAMBERS THROUGH VIDEO APPLICATION)
Civil Writ Jurisdiction Case No.6257 of 2019**

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Rajgrihi Sharma, Son of Late Baijnath Sharma, Resident of Village-
Bhadran, P.O.- Tirni Dihra, P.S.- Kargahar, District- Rohtas at Sasaram.

... .. Petitioner

Versus

1. The State of Bihar through Secretary, Department of Human Resources, Government of Bihar, Patna.
2. The Veer Kunwar Singh University through its Registrar, Ara.
3. The Vice-Chancellor, Veer Kunwar Singh University, Ara.
4. The Registrar, Veer Kunwar Singh University, Ara.
5. The Finance Officer, Veer Kunwar Singh University, Ara.
6. The Principal, Jawahar Lal Nehru College, Dehri-on-Sone, Rohtas.
7. The Director, Higher Education, Government of Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Saroj Kumar,Advocate

For the Respondent/s : Mr.Rakesh Narayan Singh, AC to AAG-15

For the University : Mr. P.K. Verma, Senior Advocate

Mr. Arabind Nath Pandey, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT**

Date : 23-03-2021

Matter has been heard at length.

The petitioner has preferred this writ application for issuance of an appropriate writ(s), order(s) or direction(s) to the respondents to make the payments of entire pensionary benefits i.e. Pension, Gratuity the amount of G.P.F., Insurance and Leave Encashment with the statutory interest @ 10% per annum till the date of payment since the petitioner has already superannuated on 31.01.2016 from the post of Storekeeper of the Department of



Chemistry of the respondent No. 6 but not a single penny has been paid.

It is the submission of learned counsel for the petitioner that the petitioner was duly appointed by the Vice Chancellor of the University in accordance with the provisions of Section 10(6) of the Bihar Universities Act, 1976. It is submitted that the petitioner served lastly in the Jawahar Lal Nehru College, Dehri-on-Sone, Rohtas (hereinafter referred to as 'College in question') and retired after about 38 years of service. He retired from service in the year 2016 and till the date of his retirement no proceeding was initiated against him. It is only after his retirement from service when he was looking for his retiral dues, he faced the difficulty. The Vigilance enquiry was set up to enquire into the matter regarding appointment and regularization of 129 non-teaching employees made by the Veer Kunwar Singh University in the year 2011, 2012 and 2013.

Learned counsel submits that later on by order contained in Memo no. 1386 dated 29.06.2019 issued by the Additional Chief Secretary, Department of Education, Government of Bihar and the follow up decisions of the University contained in Memo no. 1909 dated 15.07.2019, the Principal of the concerned College were directed to dispense with



the services of the 129 non-teaching employees including this petitioner. It is submitted that the petitioner having already retired from service much before issuance of the order of the Additional Chief Secretary, Government of Bihar, there was no question of dispensing with his services. Those orders of the Additional Chief Secretary and the University were challenged in CWJC No. 12657 of 2017 and other analogous matters.

It is submitted that by a judgment dated 16.09.2019 the learned coordinate Bench of this Court quashed those orders. All the petitioners in the writ applications were directed to be reinstated in service. Learned counsel for the petitioner has informed this Court that on legal advice the petitioner had also challenged those orders in CWJC No. 13728 of 2017 which was analogous to CWJC No. 12657 of 2017.

Learned counsel for the petitioner further submits that since then this petitioner has been paid only the group insurance amount and some part of the provident fund amount. The petitioner is still looking for his gratuity, leave encashment and pension. Learned counsel for the petitioner submits at this stage that the petitioner has not been paid full provident fund amount and according to him the P.F. for the period he was serving in



Jawahar Lal Nehru College i.e. from 06.09.2011 till the date of retirement i.e. 31.01.2016, is still unpaid.

Learned counsel for the petitioner submits that from Annexure '6 series' this Court may find that in the case of several other persons similarly situated, have been paid by the respondents in compliance of the directions issued by learned co-ordinate Benches of this Court in different proceedings. The orders passed by learned co-ordinate Benches of this Court in CWJC No. 17044 of 2007, CWJC No. 6618 of 2016, CWJC No. 14145 of 2016, CWJC No. 1377 of 2010 and its analogous cases and CWJC No. 11856 of 2017 have been brought on record.

Learned counsel for the State has taken this Court through the stand of the State as disclosed in paragraph '5' onwards in the supplementary counter affidavit. The submission on behalf of the State is that the very appointment/regularization of the petitioner was not done in accordance with law. Learned counsel submits that there was no prior sanction of the post by the State Government and as such the appointments made were wholly illegal. Learned counsel has submitted that the State Government has preferred Letters Patent Appeal bearing No. 225 of 2019 against the order passed by the learned writ court in CWJC No. 6618 of 2016. LPA No. 1467 of 2019 has been



preferred against the judgment dated 16.09.2019 passed in CWJC No. 12657 of 2017 and analogous cases. It is, however, submitted that since filing of the Letters Patent Appeal, the matter is still pending and there is no interim order staying the operation of the judgment under appeal. Prayer has been made to list this matter after disposal of the said Letters Patent Appeals.

Mr. P.K. Verma, learned Senior Counsel for the University assisted by Mr. Arabind Nath Pandey, learned Advocate has taken a stand that the University has acted on the direction of the State Government. The University has also filed LPA bearing no. 55 of 2020.

Responding to the reply of the State and the University, learned counsel for the petitioner submits that only because a Letters Patent Appeal is pending before this Court, the same cannot be a ground unless the judgment under appeal is stayed to deprive the petitioner from getting his post retiral dues.

Learned counsel submits that to protect the interest of both the parties, this Court may record the undertaking of the petitioner through his learned Advocate that if any adverse order is passed against the present petitioner in the Letters Patent Appeal and he is required to refund any part of the amount which he gets on account of gratuity, pension and leave encashment, the



petitioner would abide by the order of this Court and shall deposit the required amount. Learned counsel for the petitioner has tried to persuade this Court to take a view considering the fact that the petitioner has already retired from service after serving the institution for about 38 years and even after five years of his retirement he is not getting his post retiral dues which has put him in a very stringent financial condition and in fact having been deprived of his post retiral dues, the petitioner is unable to meet his own obligations including meeting of the expenses which are required at the evening of his life.

Learned counsel has submitted before this Court that in the name of pendency of the Letters Patent Appeal if this Court deprives the petitioner from getting his post retiral dues, there may be a situation that the petitioner would not survive to receive the money if it is to be offered to him after ultimate outcome of the proceeding and the litigation. He has, thus, made earnest request to balance the equity between the parties.

In course of argument, Mr. P.K. Verma, learned Senior Counsel for the University has while answering the queries of this Court with regard to payments made to some of the retirees informed that they have been paid subject to result of the Letters Patent Appeal.



Having regard to the facts and circumstances of the case, after hearing learned counsel for the parties, this Court finds that the petitioner entered in service of the College in question on 15.02.1978 and joined there has not been disputed either by the State or the University. He had retired from service on 31.01.2016 after completion of 62 years of his age is also not disputed.

The facts emerging from the records particularly from the judgments of the learned coordinate Bench of this Court in CWJC No. 12657 of 2017 and analogous cases, are showing that the vigilance enquiry in the matter of appointment/regularization started and the order dated 29.06.2019 contained in Memo No. 1386 dated 29.06.2019 and the decision of the University contained in Memo No. 1909 dated 15.07.2019 were issued much after the retirement of the petitioner. The petitioner still challenged the orders in the writ proceedings and ultimately those orders were quashed by the learned co-ordinate Bench of this Court.

The facts of the case clearly suggest that having retired from service after 38 years of rendering of service, the petitioner is entitled for getting his post retiral dues such as gratuity, leave encashment, group insurance, P.F. and pension. As on date, there is no order of any court of law depriving the petitioner from getting his post retiral dues. On record it is an admitted position that the



University has paid some of the retired employees similarly situated with the petitioner and such payments have been made subject to result of the Letters Patent Appeal. This Court is, therefore, of the considered opinion that the University cannot take vacillating stand from case to case.

If more than one similarly situated persons have been paid consciously with an order that it would be subject to result of the L.P.A., there is no reason why the petitioner cannot be paid in a similar manner.

Mr. Verma, learned Senior Counsel submits that in fact such payments were made pursuant to the Court's order. Even if that is the position, once the University has followed the Court's order in respect of more than one of the similarly situated persons, in all fairness, equity and justice, it is incumbent upon the University to follow the same path which have been chosen for the other similarly situated persons.

This Court further finds that learned counsel for the petitioner is offering an undertaking on instruction from the petitioner that in case the petitioner would be required to pay back any amount or part thereof by virtue of an order passed by this Court, he would abide by the same and the payments which he would receive from the respondents would always be subject to



any such direction of the Court. Let this undertaking offered on behalf of the petitioner be taken as part of the order.

In the circumstances stated above, this Court directs the respondents to consider and make payment of the entire pensionary benefits i.e. pension, gratuity, the remaining amount of GPF and leave encashment as also any other admitted dues to the petitioner together with the statutory interest which such payments might have earned during the period since superannuation of the petitioner till the date of payment. Such payments be made within a period of 60 days from the date of receipt/production of a copy of this order.

Needless to say that such payments made to the petitioner would be subject to similar conditions which have been imposed by the University in respect of others.

This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

vats/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.03.2021
Transmission Date	

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

