

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10292 of 2019

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Sita Ram Yadav S/o Late Musho Yadav Resident of Village-Sohjana, P.O. and
P.S. Jhajha, District-Jamui.

... .. Petitioner/s

Versus

1. The Tilka Manjhi Bhagalpur University Bhagalpur through its Vice-Chancellor.
2. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur
3. The Finance Officer, Tilka Manjhi Bhagalpur University, Bhagalpur
4. The Principal, D.S.M. College, Jhajha, Jamui.
5. The State of Bihar through its Secretary, Higher Education Department, Government of Bihar, New Secretariat, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Niraj Kumar, Adv.
For the State	:	Mr. Bijay Bhushan Prasad, AC to SC-13
For the TMBU	:	Mr. Ritesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

11 21-06-2022 The claim of the petitioner is for grant of pensionary benefits.

The short facts of the case are that the petitioner was appointed as a Lab Boy in the Department of Chemistry vide letter dated 26.3.1980, issued by the Secretary, D.S.M. College, Jhajha, whereafter the petitioner had joined on the said post on 7.5.1980. The petitioner was then promoted on the post of office assistant on 18.4.1982 and finally, the said college was taken



over as one of the constituent unit of Tilka Manjhi Bhagalpur University, Bhagalpur, on 18.4.1982, whereafter some of the teaching and non-teaching employees were absorbed by the University, however the case of the petitioner was not considered, leading to him filing a writ petition, which was allowed and then, the petitioner was absorbed in the services of the University with effect from 18.10.2014, but unfortunately, he retired on 31.01.2016, leading to non-payment of the retiral dues on account of him having not completed the requisite service period, required for grant of pensionary benefits.

The short issue raised by the petitioner in the present writ petition is regarding counting of the services rendered by the petitioner prior to him being absorbed in regular service by the University vide order dated 18.10.2014 i.e. with effect from 26.3.1980 for the purposes of calculation of retiral dues. In support of his contention, the learned counsel for the petitioner has referred to a judgment rendered by a coordinate Bench of this Court dated



27.9.2018, passed in CWJC No. 223 of 2017 (Nakul Prasad Singh vs. The State of Bihar & Ors.), paragraphs no. 5, 6, 7, 8 and 11 whereof are reproduced hereinbelow:-

"5. He submitted that even after fulfilling the entire criteria for payment of retiral benefit, the same is being denied to him on the ground that his service was regularized by order of the Vice Chancellor dated 18.10.2014, which is erroneous. It was submitted that the very concept of absorption indicates that the petitioner was already holding a post and working on it and, thus, the relevant Statute providing that for the purposes of retiral benefits, the qualifying service would include all previous periods including those spent under probation either on temporary or officiating capacity followed without interruption by substantive appointment. It was submitted that the petitioner having continued on the post without interruption, the University is required to consider and pay the post retiral dues of the petitioner for the entire length of his service.



6. Learned counsel for the State submitted that the stand taken by the University that the period of qualifying service would start only from the day the service of the petitioner was absorbed i.e., 18.10.2014 is correct and the petitioner is not entitled to any post retiral benefit.

7. Learned counsel for the University has filed various affidavits and also a 4th supplementary counter affidavit today, but fairly took a stand that the case of the petitioner is covered by a Division Bench judgment of the Court in L.P.A. No. 901 of 2008 in the case of Nand Lal Mandal vs. The Tilkamanjhi Bhagalpur University & Ors., on the issue of counting of the period of service of the petitioner for pensionary benefits.

8. Having considered the same and also the provisions of the Statutes relating to payment of retiral benefits and the Statutes for grant of retirement benefits to employees of the Bihar /Ranchi /Bhagalpur /Magadh /L.N. Mithila/ K.S.D. Sanskrit University as approved by the Chancellor, which provides for pension



based on qualifying service and Clause 14 (i) of the same stipulating that if the service is rendered on a full time basis including period spent on probation either on temporary or officiating capacity followed without interruption by substantive appointment in the same or any other post, shall count as qualifying service. Thus, from the aforesaid it is clear that the Court only directed in its order dated 03.04.2013, that arrears of salary would not be paid but that would not amount to the entire past service of the petitioner being washed away, as the same is also governed by the relevant Statute and Clause 14(i) of the same stipulating that such period has also to be reckoned, the Court finds that the petitioner is entitled to payment of his retiral benefits counting the entire period of service.

11. For reasons aforesaid, the writ petition stands allowed with a direction to the Vice Chancellor, Registrar and Finance Officer of the University to ensure that all retiral benefits of the petitioner are paid to him taking into consideration the period of service



from 06.05.1980. Such payment be made within two months from the date of production of this order before the Vice Chancellor, Registrar and Finance Officer of the University."

Thus, it is the submission of the learned counsel for the petitioner that the case of the petitioner is squarely covered by the aforesaid judgment rendered in the case of Nakul Prasad Singh (supra).

Per contra, the learned counsel for the Respondent-State and the Respondent-Tilka Manjhi Bhagalpur University, Bhagalpur, have not disputed the fact that the present case stands squarely covered by the aforesaid judgment rendered in the case of Nakul Prasad Singh (supra).

Having regard to the facts and circumstances of the case and considering the materials available on record, the present writ petition stands allowed in terms of the ratio laid down by the learned Coordinate Bench of this Court in the case of Nakul Prasad Singh (supra) with a further direction to the



Vice-Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur, as also the State Government to ensure that all the retiral benefits of the petitioner are paid to him taking into consideration the period of service rendered by the petitioner with effect from 26.3.1980. It is needless to state that such payments shall be made within a period of three months from the date of production of a copy of this order before the learned Vice Chancellor, the Registrar and the Finance Officer of the Respondent-University.

(Mohit Kumar Shah, J)

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