

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22919 of 2018

=====

Sudha Ojha w/o Late Sushil Kumar Ojha resident of Plot no. 136, Road No. 10, Aditya Garden, Near R.I.T. More, Adityapur, Forest Block, Adityapur Industrial Are, Adityapur Seraikela- Kharsawan, Jharkhand-832109. **Petitioner**

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Higher Education, Government of Bihar, Patna.
4. The Vice-Chancellor, Magadh University, Bodh-Gaya, Gaya.
5. The Finance Officer, Magadh University, Bodh Gaya, Gaya.
6. The Registrar, Magadh University, Bodh-Gaya, Gaya.
7. The Principal, College of Commerce, Patna.

... .. **Respondents**

=====

Appearance :

For the Petitioner	:	Mr.Pratik Kumar Sinha, Advocate
For the State	:	Mr.Narendra Kumar, AC to GP-20
For the M.U.	:	Ms.Prakritita Sharma, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 18-08-2023

Heard learned counsel for the petitioner, learned counsel for the Magadh University, Bodh Gaya and learned counsel for the State.

2. This writ application has been filed by the widow of a re-designated demonstrator in the Department of Chemistry in the College of Commerce, Patna. The husband of the petitioner died on 12th November, 2015. According to the respondents, the husband of the petitioner had worked till 31st August, 2013, whereas according to the petitioner, her husband had worked till



January, 2014.

3. It appears that after death of her husband, the respondent no. 7 came out with an order dated 24.01.2018 as contained in letter no. A/c 225/18 (Annexure '16' to the writ application) by which the respondent no. 5 has been directed to recover/adjust an amount to the tune of Rs. 6,32,984/- from the pensionary benefits. The petitioner has also prayed for quashing of the notification no. Fin/pen/1455/18 dated 09.10.2018 (Annexure '18) issued by the Registrar, Magadh University, Bodh Gaya (respondent no. 6), by which the said amount of Rs. 6,32,984/- has been deducted and recovered from the pensionary benefits. The petitioner also prayed for quashing of the part of the order dated 25.11.2016 (Annexure '15') as well as the order dated 29.03.2016 (Annexure '14') in so far as they relate to the husband of the petitioner.

4. It is prayed that upon quashing of the aforesaid orders the amount recovered from the petitioner and the arrears of salary of her husband be paid to the petitioner with suitable interest.

5. Learned counsel for the petitioner has assailed the impugned orders on various grounds which have been summed up in paragraph '36' of the writ application. Attention of this Court has been drawn towards the developments which took place from time to time in the matter of re-designation of the demonstrators.



Brief facts of the case and submissions on behalf of the petitioner

6. It is stated that the husband of the petitioner was a re-designated demonstrator in the College of Commerce, Patna in the Department of Chemistry under Magadh University, Bodh Gaya. He was initially appointed as Store Keeper in the College of Commerce on a sanctioned and vacant post in the Department of Chemistry Vide memo no. 465 dated 28.08.1975. He was appointed on a sanctioned and vacant of Laboratory Assistant in the Department of Chemistry. At the relevant time, he was a graduate in science, later on he acquired his post graduation degree in Chemistry.

7. It is further case of the petitioner that by virtue of the letter no. 1115 dated 14.06.2006 issued by the State Government through it's Human Resources Development Department (Higher Education), Bihar and in terms of the judgment and order dated 22.07.2002 of the Hon'ble Supreme Court passed in SLP No. 7021/1999 and 7022/1999 vide Civil Appeal No. 4215-16/2002, the Lab Technicians/Lab-In-Charges of all the Universities and colleges who were having graduate degree were re-designated as demonstrators and their pay fixation was done with effect from their initial date of appointment.



8. It is submitted that on perusal of the said decision of the State Government as contained in Annexure '1' to the writ application, it would appear that Lab-Technicians who were being re-designated as demonstrators were treated as teachers within the meaning and definition as provided under the Bihar State Universities Act, 1976 (hereinafter referred to as the 'Act of 1976'). Annexure '2' is the copy of the notification dated 23.06.2007 issued by the Magadh University, Bodh Gaya whereunder the list of different persons re-designated as demonstrators has been provided and it contains the name of husband of the petitioner at serial no. 77. Annexure '3' and '4' to the writ application are the decisions regarding pay fixation and pay scales w.e.f. 01.01.1996 and the decision of the University to provide revised pay in view of sixth Pay Revision in the pay scale of Rs. 9300-34800/- respectively.

9. It is stated that all of a sudden the State Government vide its letter no. 18.12.2008 took a decision that the persons who were re-designated as demonstrators in terms of the judgment of the Hon'ble Apex Court would be entitled to the pay scale and other emoluments admissible to the demonstrators with effect from the date of issuance of the orders to the said effect, but they will not be approved as teachers in the light of



the judgment of the Hon'ble Apex Court. The State Government thereafter withdrew its decision.

10. It is stated that large number of demonstrators including the husband of the petitioner moved this Court in C.W.J.C. No. 1377/2010 and C.W.J.C. No. 8193/2010 which were heard and disposed of by a common judgment and order dated 21.09.2010. A copy of the judgment of this Court has been annexed as Annexure '5' to the writ application and learned counsel for the petitioner has drawn the attention of this Court towards paragraph '24' of the said judgment (Annexure '5') whereunder it is recorded that the State Government's Circular vide memo no. 12 dated 18.12.2008 and similar circulars issued and follow-up communications on similar line to that contained in Clause 2(xii) thereof which holds that re-designated demonstrators cannot be treated as teachers has to fail and cannot be sustained. According to this judgment, the consequence would be that all re-designated demonstrators who have got promotion under the Universities Statute or otherwise as Lecturers or Readers, as the case may be, in whichever University in Bihar would continue accordingly and they cannot be reverted nor their remuneration reduced. A challenge to this judgment of the learned Single Judge failed in LPA No.



981/2011 and the State Government's Special Leave Petition being SLP (C) No. CC-1324/2012 was dismissed *in limine* vide order dated 27.02.2012.

11. It is submitted that even as in a contempt petition being MJC No. 1432/2011, the Hon'ble Single Judge passed a stringent order but the same was not implemented and the State legislature amended Section 2(v) of the Act of 1976 vide Bihar State Universities (Amendment and Validation) Act, 2012 by which earlier definition included the word 'demonstrators' was taken away retrospectively i.e. w.e.f. 05.10.1991. The main purpose of that amendment was to exclude the demonstrators from the definition of the word 'teacher'. As a result of this amendment, the husband of the petitioner and the persons similarly situated could not derive the promotional avenues and enhanced pay scales.

12. In the aforementioned background, the State Government took a decision to provide a remuneration to the demonstrators in the pay scale of Rs. 5500 – 9000/- (unrevised), upon revision w.e.f. 01.01.1996 actually implemented w.e.f. 01.04.2007. The pay scale of Rs. 9300-34800/- with grade pay was provided to the re-designated demonstrators. The contempt application was, thereafter disposed of vide Annexure '8' to the



writ application with a direction to the State authorities to clear the arrears up to date to the redesignated demonstrators.

13. The order dated 13.11.2013 passed by the Hon'ble Single Judge in the contempt application being MJC No. 1788/2011 was challenged by the State in a Letters Patent Appeal being LPA No. 941/2015. In the meantime, the vires of the amending Act by which Section 2(v) of the Act of 1976 was amended to exclude the demonstrators from the purview of teachers was challenged but the same was dismissed by Hon'ble Division Bench of this Court and the Hon'ble Apex Court affirmed the judgment of the Hon'ble Division Bench of this Court. Thus, the amendment was held *intra vires*. It is pointed out from the order of the Hon'ble Apex Court passed on 27.02.2017 in Civil Appeal No. 6178-6181 of 2015 (Annexure '9' to the writ application) that the Hon'ble Supreme Court made an observation that the present status, rank and pay of the appellants will not be disturbed and any Lab Assistant who has been given designation of demonstrator which he continues to hold till date, will not be withdrawn. It was further held that they would not be entitled to any further benefit in conflict with the impugned Act. The husband of the petitioner was also before the Hon'ble Supreme Court in the aforesaid Civil Appeal.



14. It is submitted that LPA No. 941/2015 and other analogous appeals were finally disposed of vide order dated 01.08.2017 after taking note of the judgment of the Hon'ble Supreme Court in the Civil Appeal and the consequential notification of the State Government issued vide letter no. 1301 dated 06.07.2017. The University and the State were directed to implement the order of the Hon'ble Apex Court and take the follow-up action.

15. Learned counsel for the petitioner submits that the retirement age of teaching cadre in the University in the State of Bihar is 65 years whereas the retirement age of non-teaching cadre is 62 years. Earlier the husband of the petitioner had been granted the pay scale of Rs. 5500-9000/- w.e.f. 01.01.1996 vide office memo no. 584 dated 29.11.2010 and he was treated as a teacher, which would be evident from Annexure '12' to the writ application. By Annexure '13', the Registrar of the Magadh University vide memo no. 489/10/654/GIA dated 10.01.2011 and memo no. 58/11/C dated 03.02.2011 notified that by virtue of the order passed by the Hon'ble Patna High Court in C.W.J.C. No. 11348/2010 and C.W.J.C. No. 11775/2010 and other analogous cases, those who were in service on 30.06.2010 and afterwards will superannuate on completion of 65 years of



age subject to final orders in Hon'ble Supreme Court as well as in LPA filed by the State Government against the aforesaid orders. According to this notification, all such teachers will continue in their service and shall be paid their salary as before. It further states that if the claims of the teachers are found not genuine, they would be liable to refund.

16. Learned counsel for the petitioner submits that the judgment of the Hon'ble Apex Court finally came on 27.02.2017 holding that the petitioner and others will not be teachers and that they would be entitled to get the status of demonstrators. It is only vide letter no. 104/2016 dated 29.03.2016 that the Principal of the College (respondent no. 7) sought necessary directions from the Registrar of the University with regard to the husband of the petitioner and other three who worked beyond the retirement age of 62 years and received excess amount. The Principal of the College vide it's letter No. A/C/225/18 dated 24.01.2018 requested the Finance Officer (respondent no. 5) to recover/adjust an amount of Rs. 6,32,984/- from the husband of the petitioner. The case of the petitioner is that her husband worked in the College of Commerce till January 2014, however in the impugned letter, it is shown that he worked till 31.08.2013. In the monthly progress dated



18.01.2014 of the teachers, the husband of the petitioner has been shown taking classes of B.Sc. Chemistry.

17. It is her case that the husband of the petitioner was placed in the teaching cadre vide Annexure '13' to the writ application and even after coming into force of the Amending Act 2012, he was allowed to continue and work as teacher and he was paid his part salary every month till 31.08.2013. Under these circumstances, there cannot be an order directing recovery with retrospective effect and recovery from the pensionary benefits of a deceased employee would cause immense hardship to his dependant. It is stated that no show cause notice was issued either to the husband of the petitioner (since deceased) or the petitioner prior to passing of the impugned orders.

Stand of the State Respondent Nos. 2 & 3

18. A counter affidavit has been filed on behalf of the respondent nos. 2 and 3 (State Respondents). In the counter affidavit, a plea has been taken that the protection of status, rank and pay has been granted to only those re-designated demonstrators who continued to hold post on 27.02.2017, but admittedly, the husband of the petitioner was not holding the said post on that date, therefore, he is not entitled to such protection. There is no denial of the averments made in the writ



application that husband of the petitioner was allowed to work as teacher even after coming into force of the Amending Act of 2012 whereby the definition of the word 'teacher' as contained in Section 2(v) was amended to exclude the demonstrators.

Stand of the Magadh University

19. A counter affidavit has also been filed on behalf of the Magadh University, Bogh Gaya. It is their stand that the retirement age of non-teaching staff is 62 years whereas of the teaching staff is 65 years. The petitioner's husband should have retired on 31.11.2011 but was continued till 31.08.2013 and excess salary amounting to Rs. 6,32,984/- was paid to him.

20. It is further stated in the counter affidavit of respondent nos. 4, 5 and 6 that the petitioner's husband was re-designated demonstrator in the pay scale of Rs. 5500-9000/- and Rs. 9300-34800/-.

21. Learned counsel for the University as well as the State have opposed this writ application.

Consideration

22. Having heard learned counsel for the parties and on perusal of the records, this Court finds that vide Annexure '12' to the writ application, the Registrar, Magadh University granted pay scale of Rs. 5500-9000/- (w.e.f. 01.01.1996) to the



husband of the petitioner and the persons similarly situated who were treated as demonstrators in the teaching cadre. Annexure '12' to the writ application reads as under:-

Annexure '12'

"MAGADH UNIVERSITY, BODH GAYA

NOTIFICATION

In compliance with the judgment of the Hon'ble High Court Patna passed on 01.09.10 & 21.09.10 in C.W.J.C. No. 2002/10, 3090/10, 9321/10, 9599/10, 9650/10, 1794/10, 4327/10, 11356/10, 13333/10, 12557/10, 2271/10, 1128/10, 1377/10, 13910/10, 14013/10, 5227/10, 6474/10, 7729/10, 14360/10, 7094/10, 8192/10, 8193/10 and analogous cases the Redisgnated Demonstrators are to be treated as Demonstrators in the teaching cadre and consequently they will be placed the scale of Rs. 500-9000/- implemented w.e.f. 01.01.1996 in the light of the Govt. order as contained in letter no. 1300 dated 20.07.2000. The payment of salary in the above scale will be subject to the availability of grant from the State Govt. in this head.

The office order issued previously in this regard stands cancelled.

By the order of Hon'ble Vice-Chancellor

Registrar

Magadh University, Bodh Gaya.

Dated 29/11/10

Memo No. 584/GIA

Copy forwarded for information and needful action:-

1. All the heads of P.G. Department of M.U., Bodh Gaya.
2. All Principal of Constituent Colleges, M.U., Bodh Gaya.
3. Pr. Secretary/Director, Higher Education, HRD Dept. Govt. Bihar, Patna.
4. Pr. Secretary/Jt. Secretary, Govt. Secretariat, Raj Bhawan, Patna.
5. All Officers, M.U., Bodh Gaya.
6. P.A. to Hon'ble V.C./P.V.C./Registrar/F.A./F.O./Pro M.U., Bodh Gaya.

29.11.10

Registrar

Magadh University, Bodh Gaya.

29.11.10"

23. It further appears that the Principal, College of



Commerce (respondent no. 7) issued notification dated 03.02.2011 whereunder it was notified that those who were in service on 30.06.2010 and afterwards will superannuate on completion of 65 years of age subject to final orders in Hon'ble Supreme Court as well as in LPA filed by the State Government against the orders passed by the Hon'ble Patna High Court in C.W.J.C. No. 11348/2010 and C.W.J.C. No. 11775/2010. Annexure '13' to the writ application is, thus, quoted as under:-

Annexure '13'

**“College of Commerce, Patna-20
Notification”**

In pursuance to M.U. letter No. 489/10/654/GIA dated 10.01.11 in the light of the judgment of the Hon'ble Patna High Court of judicature at Patna passed in CWJC No. 11348/10, CWJC No. 11775/10 and other analogous cases, it is notified that the teachers of College of Commerce, Patna under Magadh University, Bodh Gaya who were in service on 30-06-10 and after wards will superannuate on completion of 65 years of age subject to final orders in Hon'ble Supreme Court as well as in LPA filed by State Govt. against the aforesaid order.

Therefore, all such teachers will continue in their service and shall be paid their salaries as before. If the claims of the teachers are found not genuine they would be liable to refund all the amount received by them by virtue of their continuance of service in terms of order of the Hon'ble Court and University.

Sd/-
Principal

Memo No. 58/11/C

Dated: 3.2.11

Copy forwarded for information and necessary action to:-

1. Concerned teachers, College of Commerce, Patna-20.
 2. All heads of departments, College of Commerce, Patna-20
 3. Bursar, Accountant, S.O. Sri Damoder Tiwary, Asstt. Sri Sanjeev Kumar, Asstt.
- The Librarian, Examination Deptt. Cash Section, College of Commerce, Patna-20.



Principal”

24. It is an admitted position that the husband of the petitioner was continuing in service on the date Annexure ‘13’ came into existence. His date of superannuation was 31.10.2011, but by virtue of Annexure ‘13’ which was in turn issued towards implementation of the judgment of this Court, the husband of the petitioner continued in service in teaching cadre.

25. It further appears that the State legislatures brought Amending Act of 2012 by which Section 2(v) of the Act of 1976 stood amended w.e.f. 05.10.1991. This amendment was under challenge and there is a specific averment in paragraph 29 of the writ application that the Hon’ble Apex Court was pleased to pass an interim order dated 15.04.2014 that the demonstrators who are working shall not be reverted. The case of the respondents in the counter affidavit is that the husband of the petitioner continued to work till 31.08.2013. Therefore, there is an admitted position in the present case that the husband of the petitioner was not reverted prior to his superannuation i.e. 31.11.2011. The college continued to avail his service, till 31.08.2013, though the case of the petitioner is that her husband continued to render his service till 18.01.2014 as per the monthly progress dated 18.01.2014 of teachers.

26. In fact, neither in the counter affidavit of the State



respondents nor in the counter affidavit of the University there is any denial of the claim of the petitioner that her husband continued to work. From the correspondences between the Registrar of the University (respondent no. 6) and the Principal of the College (respondent no. 7) as contained in Annexure '14' and '15' of the writ application, it is evident that for the first time, the respondent no. 7 informed the respondent no. 6 that in different departments of his college altogether four re-designated demonstrators have worked beyond the age of 62 years and have received salary. Annexure '15' written by respondent no. 6 is in respect of one Smt. Vijayarani Agrawal, a retired Laboratory Incharge. It is in this letter that respondent no. 6 issued a direction that if the college has paid salary to re-designated demonstrators beyond the age of 62 years then the salary paid to them is recoverable. About one year thereafter, respondent no. 7 wrote a letter (Annexure '16' to the writ application) to the Finance Officer of the University informing him to recover/adjust a sum of Rs. 6,32,984/- from the petitioner. There is no denial of the fact that prior to issuance of the order for recovery, no opportunity to show cause was given either to the husband of the petitioner or the petitioner. Thus, the whole exercise of recovery has been done *ex parte*.



27. In the given facts and circumstances and the materials discussed hereinabove, this Court is of the considered opinion that the amount paid to the husband of the petitioner as salary for the period 01.11.2011 to 31.08.2013 for the services rendered by him in the teaching cadre cannot be recovered. This is not a case in which the petitioner's husband continued to render services by concealment of his age or by playing fraud upon the college. In the long drawn battle which continued over the years, the college and the University allowed the husband of the petitioner to continue to render his service in the teaching cadre, therefore, they would be estopped from claiming any recovery of salary amount from the pensionary benefits payable to the petitioner. The husband of the petitioner died on 12th November, 2015, therefore recovery from the pensionary benefit payable to the petitioner would cause immense hardship to the petitioner at the evening of her age.

28. In result, this Writ Application is allowed. The impugned orders in so far as they relate to the husband of the petitioner or the petitioner are set-aside.

29. The respondents are directed to refund the entire amount of Rs. 6,32,984/- with interest at the rate of 9% per annum from the date of recovery till the date of payment to the



petitioner within a period of two months from today.

30. As regards the claim of the petitioner for arrears of salary for the period between 01.09.2013 to 31st of January, 2014 and payment of difference of salary for the period between 01.11.2011 to 31.08.2013, the petitioner is at liberty to file an appropriate representation within a period of four weeks from today which will be considered by the Vice-Chancellor, Magadh University, Bodh Gaya (respondent no. 4) and appropriate order thereon shall be passed within a period of six weeks from the date of submission of the representation. In course of consideration of the representation, the Vice-Chancellor shall give an opportunity to the petitioner to submit all such documents which may be available with her.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.08.2023
Transmission Date	

