

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1076 of 2011

In
Civil Writ Jurisdiction Case No.11078 of 2007

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Kamal Kishore Prasad, Son of Late Yamuna Prasad, resident of Colony
Brahmpura. MIT Laxmi Chowk, Police Station Barahmpura, District-
Muzaffarpur

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Secretary, Department of Human Resources, Bihar, Patna.
3. The Director, Department of Higher Education, Bihar, Patna.
4. The Vice Chancellor, B.R. Ambedkar Bihar University, Muzaffarpur.
5. The Registrar, B.R. Ambedkar Bihar University, Muzaffarpur.
- 6 The Finance Officer, B.R. Ambedkar Bihar University, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ansas Manikant, Advocate
For the Respondent/s : Mr. Manoj Priaydarshi SC17

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 25-04-2023

Heard learned counsel for the appellant and learned
counsel for the respondents.

2. The present L.P.A. is directed against the order
dated 27.09.2010 passed in CWJC No. 11078 of 2007 by the
learned Single Judge of this Court whereby and whereunder the
civil writ petition filed by the appellant has been dismissed.

3. In the writ petition, the appellant-petitioner has
sought following relief :

“i) For issuance of a writ in the nature of certiorari



or any other appropriate writ for quashing of the notification dated 02.02.2006 issued by the B.R. Ambedkar Bihar University (hereinafter referred to as 'University' only) whereby the pay scale of the petitioner has been reduced from the existing pay scale of Rs. 2200- Rs.4000/- (corresponding revised pay scale of Rs. 8000/- to 13500/-) to the revised pay scale of Rs. 6500/- to 10500/- in an erroneous manner.

ii) For issuance of a writ in the nature of mandamus or any other appropriate writ for commanding the respondent to grant pay scale of grade II to the petitioner after completion of 5 years of service i.e. with effect from 03.04.1980, pay scale of grade I after completing 10 years of service i.e. with effect from 03.04.1985 and selection grade after completion of 12 years of service i.e. with effect from 03.04.1987 as per norms prescribed by the Inter University Sports Board of India (hereinafter referred to as 'Board' only) vide letter dated 15.07.1975 (Annexure2).

iii) For issuance of a writ in the nature of mandamus or any other appropriate writ for commanding the respondents to make the payments of the arrears to the petitioner with admissible interest as per the aforesaid revised scale admissible to him.

iv) For holding that the act of the respondent in not granting the corresponding pay scale to the petitioner as prescribed by the Inter University Sports Board of India mentioned in letter dated 15th July 1975 issued by it to the Sports Officers, Member Universities/ Institute as announced by the



Ministry of Education and Social Welfare is highly arbitrary, unreasonable, against the settled principles of law as well as violative of the instruction, resolution and circulars issued by the competent authority from time to time.

v) For issuance of any other appropriate writ order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.”

4. Brief facts of the case are that the appellant-petitioner was appointed as Football Coach on 03.04.1975 vide University notification no. B/5233-38 issued under the signature of the Registrar on temporary basis in the pay scale of Rs.250-15-400/-. The appointment of the appellant was extended from time to time by the Vice Chancellor/ Registrar of the University by different orders and finally the Vice Chancellor of the University allowed the pay scale of Rs.500/- to 900/- admissible to grade III Football Coach along with other admissible allowances, w.e.f., 01.05.1978 vide office order dated 16.06.1978. The Inter University Sports Board of India (in short, 'Board') vide its letter dated 15.07.1975, addressed to the Sports Officer, Member, Universities/Institutes prescribed the revised pay scale of the NS NIS Coaches as announced by the Ministry of Education and Social Welfare. The appellant submitted a representation to the Vice Chancellor for up-



gradation of his scale of pay from Rs. 500/- to 900/- to the scale of pay Rs. 700-1100/- in view of the letter dated 15.07.1975 issued by the Board. The Vice Chancellor in consultation with the Secretary, University Sports Council, directed that the post of the appellant may be upgraded from IIIrd grade to IInd grade and he be allowed the scale of Rs.700-1100/- and the payment of his salary in the upgraded scale of pay might be made only after the approval of the State Government. Accordingly, the University vide its letter no. 5618 dated 08.11.1984 requested the Joint Secretary, Education Department. Govt. of Bihar, Patna for grant of approval of the State Government for the up-gradation of the scale of pay of the appellant from Rs 500-900/- to 700-1100/- w.e.f. 29.02.1984. Thereafter, a meeting of the promotion committee of the University was held on 19.02.1991 to consider the cases of promotion of IIIrd and IVth grade employees of the University including the appellant under time bound promotion scheme. The committee recommended the appellant for first time bound promotion with effect from the date of his initial appointment. Consequently, the office order dated 23.02.1991 was issued under the signature of the Registrar of the University whereby the appellant was allowed the first time bound promotion in the pay scale of Rs.700-1100/-, w.e.f.,



3rd April, 1985. Another office order contained in memo no. B/899 dated 18.03.1991 was issued by the University under the signature of the Registrar whereby the Vice Chancellor of the University, on recommendation of the pay fixation committee, held on 13.03.1991, approved the pay fixation of the appellant on Rs.780/- in the pay scale of Rs.700-1100/- with effect from 3rd April, 1985. Thereafter, the University issued an office order contained in Memo No. B/2164 dated 08.12.1992 under the signature of Registrar whereby the Vice Chancellor on recommendation of the Pay Fixation Committee held on 14th November,1992 approved the pay fixation of the appellant at Rs. 2500/- on 01.01.1986 in the revised pay scale of Rs.2200-4000/-. The appellant stagnated in the pay scale of Rs.2200-4000/-(the corresponding revised pay scale of which is Rs. 8000-13500/-). However, surprisingly instead of granting the grade I and selection grade pay scale to the appellant, the pay scale of the appellant has been fixed in the degraded pay scale of Rs.6500-10500, i.e., even lower than the existing replacement admissible pay scale of Rs.8000-13500/- (earlier pay scale of which is Rs.2200-4000/-) vide notification dated 02.02.2006, which has been challenged in CWJC No.11078 of 2007. The learned Single Judge having considered the matter in its entirety,



dismissed the aforesaid writ petition with some observation and direction vide order dated 27.09.2010, which is under challenge in the present LPA.

5. The learned counsel for the appellant submitted that the appellant is entitled for the pay scale as prescribed by the Board and as such the pay scale of grade II, grade I and selection grade ought to have given to him with effect from April 1980, April, 1985 and April. 1987 respectively on completion of five years, 10 years and 12 years of service. The learned counsel further submitted that the respondent authorities have adopted a method of pick and choose in granting admissible pay scale to the appellant. The appellant being a Football Coach was a teaching employee of the University and could not be equated with non- teaching employee in an arbitrary manner. The learned counsel further submitted that the appellant has been subjected to hostile discrimination by the arbitrary and indifferent attitude of respondent authorities as the Coaches in different Universities are getting higher pay scale than the appellant though they are junior to the appellant e.g. Sri B. Kandoluna, Hockey Coach, Ranchi University was getting a pay scale of Rs.3000-4500/- i.e. grade I scale in the year 1991 even before bifurcation of State as is apparent from the perusal



of the letter dated 23.08.1991 issued by the Director, Physical Education addressed to the Registrar, the then Bihar University, Muzaffarpur. However the appellant was getting grade III scale in the year 1991. The learned counsel further submitted that vide office order contained in memo no. 118 dated 12.01.2009 issued under the signature of Registrar of the University, the Vice-Chancellor has been pleased to approve the pay fixation of 14 PTI in the UGC Pay scale of Rs 8000/- 13500/- from 01.01.1996 as contained in Govt. letter No. 2/D-1- 03-2006-2088 Patna dated 23.11.07 and certified by the University vide letter no. B/293 dated 09.02.08. The petitioner is also entitled for the aforesaid scale in view of his qualification. The learned counsel further submitted that a new football coach has been appointed in the University three years earlier in the pay scale of Rs. 5000-8000/ and he has been given the scale of Rs.8000- to 13500/- within a period of three years itself though an up-gradation is allowed after a period of 5 years, but the petitioner has been subjected to hostile discrimination. Further, one Vijay Pratap Singh, Football Coach in BRA Bihar University has been extended pay scale of Rs.8,000-13,000/- in the year 2011. But the same was not granted to the appellant-petitioner. This shows clear bias against the appellant-petitioner.



6. On the other hand, the learned counsel for the respondents submitted that no interference in the impugned judgment of learned Single Judge is called for as the same has been passed after duly considering all the materials on record. The learned counsel for the State-respondents submitted that during course of examination of records with regard to service of the appellant on the post of Football Coach by the Education Department, it has been found that the appellant was appointed on 03.04.1975 on the post of Football Coach, though no post of Football Coach was sanctioned in the University meaning thereby that the appellant was appointed against a non-sanctioned post and no pay scale was prescribed for the said post and the appellant was granted pay scale equivalent to the post of PTI by the University, which was not permissible in the eyes of law. The University never obtained approval of appointment of the appellant from the State Government under Section 35 (2) of the Bihar State Universities Act. In view of the aforesaid facts, the Education Department came to a conclusion that the appellant was appointed against a non-sanctioned post in violation of Section 35(2) of the Bihar State Universities Act and the appointment of the petitioner was illegal. Thus, no interference in the matter is required by this Court.



7. Having considered the material available on record and further considering the rival submissions, core question, which arises for consideration, is whether the appellant is entitled to pay scale of Rs.8000/- to 13,500/- at par with Sri Vijay Pratap Singh, who has been extended the said pay scale?

8. On 22.02.2023, this Court has passed the following orders :

“Pursuant to the previous order dated 15.02.2023, Prof. Rekha Kumari, Director, Higher Education, Bihar is present in the Court.

Despite presence of Director, Higher Education, Bihar there is no assistance to the extent that why one Shri Vijay Pratap Singh, football coach in B.R.A. Bihar University, Muzaffarpur, has been extended pay scale of Rs.8000/- to 13500/- in the year 2011, whereas, appellant who attained age of superannuation and retired from service on 31.08.2007, has been extended pay scale of Rs. 6500/- to 10500/-. His claim is that he is also entitled to pay scale of Rs. 8000/- to 13500/- on par with Shri. Vijay Pratap Singh, on this point the counter-affidavit and the supplementary affidavit filed on behalf of the respondents are silent. Even though crucial issue is whether appellant is entitled to pay



scale of Rs. 8000/- to 13500/-? In this regard petitioner is relying on office order of B.R. Ambedkar Bihar University, Muzaffarpur issued in favour of Shri. Vijay Pratap Singh who has been extended pay scale of Rs. 8000/- to 13500/- and it has not been answered in the counter affidavit/supplementary affidavit.

Having regard to the fact that appellant has attained the age of superannuation and retired from service on 31.08.2007 and he is before this Court since the year 2007 and L.P.A. is of the year 2011, further two weeks' time is granted subject to payment of cost of Rs. 10,000/-, cost shall be paid by the State Government/University and it shall be remitted in High court Legal Services Authority.

State Government is permitted to file further supplementary affidavit in order to overcome the contention regarding the pay scale extended to Shri. Vijay Pratap Singh at Rs. 8000/- to 13500/- and why similar pay scale cannot be extended to appellant?

Re-list this matter on 13.03.2023".

9. In terms of the aforesaid order, a supplementary counter affidavit has been filed on behalf of the respondent nos. 2 & 3. It would be relevant to quote paragraph nos. 5 to 12 of



the said affidavit :

“5. That it is humbly stated that in pursuance of the aforesaid direction, the Department convened a meeting with the official of the respondent university and requested them to furnish the service record and other relevant material related with both the appellant as well as Shri Vijay Pratap Singh.

6. That it is humbly stated that the respondent university failed to supply the relevant documents showing sanction of the post of Football Coach against which both the appellant as well as Shri Vijay Pratap Singh had been appointed, which means that both the appellant and Shri Vijay Pratap Singh had been appointed against unsanctioned post, which render their appointment illegal.

7. That it is humbly stated that after examining all the relevant documents related with the appellant as well as Shir Vijay Pratap Singh, the department passed a reasoned order dated 07.03.2023, which is being brought on record for the better appreciation of this fact.

8. That it is humbly stated that as per the aforesaid reasoned order the department has allowed the pension of the appellant in the last pay drawn in the pay scale of Rs. 6500-10500/- as he has already retired in the year 2007 itself.

9. That it is humbly stated that it has further been decided that since the appointment of Shri Vijay Pratap Singh has been done on unsanctioned post,



rendering his appointment void ab initio hence his service has been ordered to be terminated after one month from the issuance of the aforesaid reasoned order and after following the Principle of Rule of Natural Justice.

10. That it is humbly stated that it has even further decided that Shri Vijay Pratap Singh will also get the pay scale of Rs. 6500-10500/- for the period he has worked.

11. That it is important to mention here that since the post of Football coach has never been created/sanctioned by the State Government hence no pay scale has been assigned to that post.

12. That it is humbly stated that the department has further directed the university to identify those officials who were responsible for the appointment of appellant and Shri Vijay Pratap Singh within 30 days and take steps for recovery of the amount paid to the appellant and Shir Vijay Pratap Singh from them under the provisions contained in the Bihar & Orissa Public Demand Recovery Act, 1914.”

10. From the averments of the supplementary counter affidavit, it appears that after examining all the relevant documents related with the appellant as well as Shri Vijay Pratap Singh, the Department passed a reasoned order dated 07.03.2023, which is reproduced below :



"बिहार सरकार
शिक्षा विभाग, बिहार पटना
तार्किक आदेश

पटना, दिनांक 07/03/2023

संचिका संख्या :-14/ मु013-1020/2011LPA No-1076/2011
कमल किशोर प्रसाद बनाम-राज्य सरकार एवं अन्य में दिनांक 22.02.2023
को माननीय उच्च न्यायालय, पटना द्वारा पारित आदेश का कार्यकारी अंश
निम्नवत् है:-

Despite presence of Director, Higher Education, Bihar there is no assistance to the extent that why one Shri Vijay Pratap Singh, football coach in B.R.A. Bihar University, Muzaffarpur, has been extended pay scale of Rs. 8000/- to 13500/- in the year 2011, whereas, appellant who attained age of superannuation and retired from service on 31.08.2007, has been extended pay scale of Rs. 6500/- to 10500/- His claim is that he is also entitled to pay scale of Rs. 8000/- to 13500/- on par with Shri. Vijay Pratap Singh, on this point the counter-affidavit and the supplementary affidavit filed on behalf of the respondents are silent. Even though crucial issue is whether appellant is entitled to pay scale of Rs. 8000/- to 13500/-? In this regard petitioner is relying on office order of B.R. Ambedkar Bihar University, Muzaffarpur issued in favour of Shri. Vijay Pratap Singh who has been extended pay scale of Rs. 8000/- to 13500/- and it has not been answered in the counter affidavit / supplementary affidavit.

Having regard to the fact that appellant has attained the age of superannuation and retired from service on 31.08.2007 and he is before this Court since the year 2007 and L.P.A. is of the year 2011, further two weeks' time is granted subject to payment of cost of Rs. 10,000/-, cost shall be paid by the State Government/University and it shall be remitted in High court Legal Services Authority.

State Government is permitted to file further supplementary affidavit in order to overcome the contention regarding the pay scale extended to Shri. Vijay Pratap Singh at Rs. 8000/- to 13500/- and why similar pay scale cannot be extended to appellant?



सी० डब्लू०जे०सी० संख्या-11078/2007 श्री कमल किशोर प्रसाद बनाम-राज्य सरकार एवं अन्य में दिनांक 27.09.2010 को पारित न्यायादेश के पश्चात वादी द्वारा दायर 'एल०पी० संख्या-1076/2011 में दिनांक 06.02.2020 को पारित न्यायादेश के आलोक में श्री कमल किशोर प्रसाद, सेवा निवृत्त फुटबॉल कोच बी०आर०ए० बिहार विश्वविद्यालय, मुजफ्फरपुर की सेवा के संबंध में की गयी समीक्षा के क्रम में विभाग निम्न तथ्यों से अवगत हुआ , तथा सम्पूर्ण तथ्य प्रकाश में आया :-

वादी श्री कमल किशोर प्रसाद को फुटबॉल कोच के पद पर दिनांक 03.04.1975 को 250-400 के वेतनमान में नियुक्ति किया गया था किन्तु विश्वविद्यालय द्वारा कभी भी फुटबॉल कोच के पद की स्वीकृति संबंधी पत्र उपलब्ध नहीं कराया गया। साथ ही राज्य सरकार से बिहार राज्य विश्वविद्यालय की संगत धारा 35 (2) के तहत अनुमोदन प्राप्त नहीं किया गया ।

राज्य सरकार द्वारा उक्त पद सृजित नहीं रहने के कारण उक्त पद का वेतन / वेतनमान निर्धारित नहीं था। पुनरीक्षण में फुटबॉल कोच के लिए वर्णित पद हेतु कोई वेतनमान की अनुशंसा नहीं रहने की स्थिति में विश्वविद्यालय द्वारा वादी को 2200-4000 के वेतनमान को मनमाने ढंग से पुनरीक्षित कर पी०टी०आई० के समतुल्य 5000-8000 का वेतनमान प्रदान कर दिया गया। वादी श्री प्रसाद 31.08.2007 की तिथि में (सेवानिवृत्ति के समय) 6500-10500 का वेतनमान प्राप्त कर रहे थे।

मामले के निराकरण के क्रम में फुटबॉल कोच का कोई पद राज्य सरकार के स्तर से स्वीकृत / सृजित नहीं रहने के कारण वेतनमान के संबंध में वित्त विभाग द्वारा मंतव्य दिया गया कि प्रशासी विभाग द्वारा उल्लेख किया गया है कि विश्वविद्यालय में फुटबॉल कोच का पद सृजित नहीं हैं , तो ऐसी स्थिति में वादी का सेवा इतिहास एवं अभिमत सहित परामर्श प्राप्त किया जाय।

विभागीय अभिमत हेतु वादी के सेवा इतिहास एवं अनुमान्य वेतन के संबंध में दिनांक 24.01.2020 को विश्वविद्यालय के वित्त पदाधिकारी एवं विधि पदाधिकारी के साथ विभाग के उप निदेशक एवं वेतन कोशांग के साथ बैठक हुयी। फुटबॉल कोच के पद की स्वीकृति संबंधी आदेश विश्वविद्यालय द्वारा उपलब्ध नहीं कराया गया 01.01.1973 के वेतनमान में प्रयोग प्रदर्शक के वेतनमान के अनुरूप श्री कमल किशोर प्रसाद फुटबॉल कोच, को भी दिया गया, जिसका पुनरीक्षित वेतनमान 2200-4000 देय है। 2200-4000 का वेतनमान यू०जी०सी० का वेतनमान है। श्री प्रसाद की नियुक्ति विश्वविद्यालय स्तर से



फुटबॉल कोच के गैर सृजित पद के विरुद्ध की गयी है, जिसे कि राज्य सरकार ने किसी भी वेतनमान में स्वीकृति प्रदान नहीं की थी। विश्वविद्यालय द्वारा स्वेच्छाचारिता से श्री कमल किशोर प्रसाद की नियुक्ति की गयी तथा जानबुझकर राज्य सरकार के समक्ष बाध्यकारी स्थिति को उत्पन्न कर दिया गया। उन्हें कभी प्रयोग प्रदर्शक तो कभी पी०टी०आई० का वेतनमान स्वेच्छाचारिता के आधार पर दिया जाता रहा।

इस संबंध में पुनः वित्त विभाग का परामर्श प्राप्त हुआ, जिसके तहत बिहार राज्य के विश्वविद्यालयों एवं अंगीभूत महाविद्यालयों के पदाधिकारी एवं शिक्षकेत्तर कर्मों के वेतनमान / पुनरीक्षित वेतनमान एवं अन्य सभी संकल्प प्रशासी विभाग के स्तर से ही निर्गत होते रहने को दृष्टिपथ में रखते हुए निर्णय लिए जाने की सलाह दी गयी।

विश्वविद्यालय का कथन है कि फुटबॉल कोच का पद विश्वविद्यालय अधिनियम के बनने से पूर्व एल०एस० कॉलेज मुजफ्फरपुर में स्वीकृत था। इस स्वीकृति का भी पत्र विश्वविद्यालय उपलब्ध कराने में असफल रहा। विश्वविद्यालय अधिनियम में वर्णित है कि 15.08.1976 के पश्चात जो भी पद स्वीकृत होगा वो राज्य सरकार पूर्वानुमति बिना नहीं होगा। चूँकि फुटबॉल कोच के पद पर वादी की नियुक्ति 15.08.1976 के पूर्व 03.04.1975 को वेतनमान 250-400 पर किया गया है, जिसके आलोक में श्री प्रसाद की नियुक्ति एक स्वीकृत पद पर ही की गयी है। परन्तु विश्वविद्यालय स्तर से स्वीकृत पद का कोई साक्ष्य प्रस्तुत नहीं किया गया, न ही पद सृजन संबंधी विश्वसनीय साक्ष्य उपलब्ध कराया गया।

इसके अतिरिक्त समानान्तर मामले में श्री विजय प्रताप सिंह की नियुक्ति विश्वविद्यालय द्वारा श्री कमल किशोर की सेवा निवृत्ति तिथि 31.08.2007 के बाद विश्वविद्यालय के ज्ञापांक- 3594 / R दिनांक 01.07.2008 के प्रभाव से वेतनमान का अंकण किए बिना ही कर दिया गया तथा नियुक्ति की प्रक्रिया से विभाग को अलग रखा गया।

निदेशक, उच्च शिक्षा, बिहार के पत्रांक-280 दिनांक- 15.02.2023 द्वारा श्री विजय प्रताप सिंह तथाकथित फुटबॉल कोच, एल०एस० कॉलेज, मुजफ्फरपुर के मामले में अंतिम मौका प्रदान करते हुए समानांतर मामले में की गयी नियुक्ति / वेतन निर्धारण एवं सेवा नियमितिकरण से संबंधित सभी साक्ष्यो / अभिलेखों सहित दिनांक- 22.02.2023 को यथाचित निर्णय लिए जाने के लिए बैठक में उपस्थित होने का निर्देश दिया गया। उक्त आहूत बैठक में विश्वविद्यालय द्वारा नामित पदाधिकारी एवं सहायक उपस्थित हुए। बैठक की कार्यवाही के तहत



पुनः पद सृजन का कोई साक्ष्य उपलब्ध नहीं कराया गया। उक्त बैठक में एक और मौका प्रदान करते हुए दिनांक - 27.02.2023 को नामित पदाधिकारी एवं सहायक के कथानुसार सभी साक्ष्यों के साथ आवश्यक निर्देश देते हुए पुनः उपस्थित होने को कहा गया। इससे संबंधित कार्यवाही प्रतिवेदन विश्वविद्यालय के प्रतिनिधियों को उपलब्ध करा दिया गया, परन्तु विश्वविद्यालय स्तर से पदाधिकारी निर्धारित तिथि को उपस्थित नहीं हुए। दिनांक 01.03.2023 को विश्वविद्यालय के पत्रांक- बी0 / 410 दिनांक 01.03.2023 द्वारा संबंधित मामले का आशिक उत्तर प्रतिवेदन विभाग को भेजा गया, जिसमें पद सृजन संबंधी साक्ष्य उपलब्ध नहीं होना अंकित किया गया। फुटबॉल कोच के पद पर वित्त विभाग से प्राप्त सलाह तथा विभिन्न तथ्यों के आलोक में आदेश निम्नवत है:-

(क) श्री कमल किशोर प्रसाद की सेवा निवृत्ति 31.08.2007 को ही हो चुकी है। विश्वविद्यालय के कथानुसार विश्वविद्यालय अधिनियम के तहत 15.08.1976 के पूर्व उनकी नियुक्ति 03.04.1975 को वेतनमान 250-400 पर हुई थी। उसके बाद वेतन एवं पेंशनादि का भुगतान वेतनमान 6,500-10500 के आधार पर हो रहा है।

वर्ष 2007 में ही उनकी सेवानिवृत्ति को देखते हुए उनकी नियुक्ति अस्वीकृत पद पर होने के बाद भी नैसर्गिक न्याय के सिद्धान्तों के तहत दिये गये अंतिम वेतनमान 6,500-10,500 के आधार पर पेंशन जारी रखे जाने का आदेश दिया जाता है।

(ख) श्री विजय प्रताप सिंह की नियुक्ति विश्वविद्यालय द्वारा श्री कमल किशोर प्रसाद के रिक्त पद पर की गई, परन्तु पूर्व में ही यह स्पष्ट किया जा चुका है कि विश्वविद्यालय द्वारा कभी भी कथित फुटबॉल कोच के पद के सृजन का साक्ष्य उपलब्ध नहीं कराया गया। इस प्रकार श्री विजय प्रताप सिंह की भी नियुक्ति असृजित पद पर विश्वविद्यालय द्वारा की गई। असृजित पद पर की गई नियुक्ति अवैध है। (2006) 4SCC1 (कर्नाटक राज्य सरकार बनाम उमा देवी) के मामले में भी सृजित पद पर नियुक्ति वैध नियुक्ति का एक महत्वपूर्ण आधार है। विश्वविद्यालय को बार-बार समय देकर एवं बुलाकर फुटबॉल कोच के पद के सृजित होने का प्रमाण देने कहा गया। इस हेतु विश्वविद्यालय के साथ दिनांक - 22.02.2023 को विशेष बैठक की गई जिसकी कार्यवाही - 328 दिनांक 22.02. 2023 निर्गत की गई। उक्त तिथि को भी विश्वविद्यालय द्वारा पदसृजन का साक्ष्य उपलब्ध नहीं कराने के कारण एक और मौका देते हुए 27.02.2023 को साक्ष्य उपलब्ध कराने का मौका दिया गया। उक्त तिथि को कोई विश्वविद्यालय प्रतिनिधि उपस्थित नहीं हुए और दिये गये प्रतिवेदन पत्रांक -410



दिनांक 01.03.2023 द्वारा कोई साक्ष्य उपलब्ध नहीं कराया गया है।

उक्त परिस्थिति में श्री विजय प्रताप सिंह के असृजित/ अस्वीकृत कथित फुटबॉल कोच के पद पर नियुक्ति अवैध रहने के कारण पत्र निर्गत की तिथि से एक माह के अंदर नैसर्गिक न्याय के सिद्धान्त के तहत उनसे स्पष्टीकरण प्राप्त करते हुए उनकी सेवा समाप्त करने का आदेश दिया जाता है।

चूंकि श्री कमल किशोर प्रसाद को वेतनमान 6,500-10,500 के आधार पर भुगतान अनुमान्य किया जा रहा है अतः श्री विजय प्रताप सिंह के कार्यावधि तक का भुगतान उसी वेतनमान के आधार पर किया जायगा। यहाँ पुनः यह स्पष्ट किया जा रहा है कि विश्वविद्यालय में चूंकि फुटबॉल कोच का कोई पद सरकार द्वारा सृजित नहीं किया गया। था इसलिए इसका कोई वेतनमान भी निर्धारित नहीं था।

इस क्रम में श्री कमल किशोर प्रसाद द्वारा दायर सी 0 डब्लू 0 जे 0 सी 0 संख्या- 11078/2007 में माननीय उच्च न्यायालय, पटना द्वारा पारित आदेश दिनांक 27.09.2010 को नीचे उद्धृत किया जा रहा है :-

"... The last pay fixation and consequential retirement benefit will be decided as per norms to be followed by the State Government by fixing a pay scale of non-teaching employ of the university..."

इस प्रकार श्री विजय प्रताप सिंह जिनका मामला श्री कमल किशोर प्रसाद के समान है को गैर-शिक्षक का वेतनमान 6,500-10,500 अनुमान्य किया जा रहा है।

(ग) असृजित पदों पर श्री कमल किशोर प्रसाद एवं श्री विजय प्रताप सिंह की नियुक्ति करने एवं उनकी नियुक्ति करने की पूर्वानुमति बिहार विश्वविद्यालय अधिनिय 1976 की धारा 35(2) के तहत राज्य सरकार की पूर्वानुमति प्राप्त नहीं करने के कारण उपरोक्त दोनों कर्मियों की नियुक्ति में संलग्न सभी स्तर के पदाधिकारी एवं कर्मचारी की पहचान विश्वविद्यालय 30 दिनों के अंदर करेगा एवं उन सभी पदाधिकारियों एवं कर्मियों से Bihar & Orissa Public Demands Recovery Act of 1914 एवं बिहार विश्वविद्यालय अधिनियम, 1976 की धारा 35 (3) के तहत उपरोक्त दोनों कर्मियों को भुगतान किये गये राशि की वसूली के लिए कार्रवाई प्रारंभ करते हुए विभाग को प्रतिवेदित करेगा।

(घ) यदि विश्वविद्यालय द्वारा राशि वसूली की कार्रवाई की सूचना इस



कार्यालय को 45 दिनों के अंदर प्राप्त नहीं होती है तो विभाग द्वारा सभी संबंधित पदाधिकारियों एवं कर्मियों के विरुद्ध अनुशासनिक एवं कानूनी कार्रवाई करने को बाध्य होगी।

(ड) इस आदेश द्वारा विभाग द्वारा इस मामले में पूर्व में निर्गत आदेश 14 / मु013-1020 / 2011 - 1190 दिनांक-23.11.2020 उक्त हद तक संशोधित समझा जायगा।

Sd/-(रेखा कुमारी)
निदेशक (उच्च शिक्षा)
शिक्षा विभाग, बिहार, पटना

ज्ञापांक 14/मु013-1020/2011-416 पटना दिनांक 07/07/2023

प्रतिलिपि :- कुलसचिव एवं कुलपति बाबासाहेब भीमराव अम्बेडकर बिहार विश्वविद्यालय, मुजफ्फरपुर / अपर मुख्य सचिव, शिक्षा विभाग के आप्त सचिव / सचिव, शिक्षा विभाग के निजी सहायक / उच्च शिक्षा निदेशालय में पदस्थापित सभी उप निदेशक एवं सहायक निदेशक / प्रतिनियुक्त पदाधिकारी / प्रशाखा पदाधिकारी, प्रशाखा - 14 एवं 15 उच्च शिक्षा को सूचनार्थ एवं आवश्यक कार्यार्थ प्रेषित।

2. आई०टी० मैनेजर, शिक्षा विभाग को विभागीय वेबसाईट पर अपलोड करने हेतु प्रेषित।

Sd/-
निदेशक (उच्च शिक्षा)
शिक्षा विभाग, बिहार, पटना"

11. So far as career progression of the petitioner-appellant is concerned, the learned Single Judge has elaborately discussed all the issues and what was admissible to the petitioner during his service period. So, we are not inclined to enter into these matters. However, from the facts as brought on record it is clear that the petitioner-appellant was appointed as Football Coach against non-sanctioned post. The Department



has allowed the pension of the appellant in the last pay drawn in the pay scale of Rs. 6500-10500/- as he has already retired in the year 2007 itself. It has also come on record that the department concerned has taken a decision to revert Shri Vijay Pratap Singh to the pay scale of Rs. 6500-10500/- for the period he has worked and to take steps for his termination. Since the post of Football Coach has never been created/sanctioned by the State Government, hence no pay scale has been assigned to that post and the State Government has further directed the university to identify those officials who were responsible for the appointment of appellant and Shri Vijay Pratap Singh within 30 days and take steps for recovery of the amount paid to the appellant and Shri Vijay Pratap Singh from them under the provisions contained in the Bihar & Orissa Public Demand Recovery Act, 1914.

12. In the light of discussion made hereinabove and under the facts and circumstances of the case, it cannot be said that the learned Single Judge has committed any error which calls for interference by this Court in exercise of the appellate jurisdiction. We are in agreement with the view taken by the learned Single Judge.

13. Accordingly, the present Letters Patent Appeal is



dismissed. However, it is made clear that the appellant would not be subjected to any recovery which is not permissible under the law. Moreover he has discharged the duties of the post and at this distance of time, it is not appropriate to initiate any recovery proceedings. At this stage, it is necessary to take note of recent judgment of the Apex Court viz., *Thomas Daniel vs. State of Kerala & Ors., 2022 SCC OnLine SC 536*, which covers the aforesaid aspect of the matter.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	13.04.2023
Uploading Date	26.04.2023
Transmission Date	NA

