

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8392 of 2023

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Prem Chandra Singh, Son of Braj Lal Singh @ Braj Singh Resident of
Village-Barwa West, P.S.-Lakhaura, District-East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Higher Education Department, Bihar, Patna.
2. The Vice-Chancellor, B.R.A. Bihar University, Muzaffarpur.
3. The Registrar, B.R.A. Bihar University, Muzaffarpur.
4. The Finance Officer, B.R.A. Bihar University, Muzaffarpur.
5. The Treasury Officer, Motihari, East Champaran.
6. The Accountant General Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Devi Das Srivastava, Advocate.
For the Respondent/s	:	Mr. Rajeev Ranjan, AC to GP-20.
For the A.G. Bihar	:	Mr. Binod Kumar Labh, Advocate.
For the University	:	Mr. Satyendra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 29-08-2023

Heard Mr. Devi Das Srivastava, learned counsel
appearing on behalf of the petitioner; Mr. Rajeev Ranjan,
learned AC to GP-20 for the State; Mr. Binod Kumar Labh,
learned counsel for the Accountant General, Bihar and Mr.
Satyendra, learned counsel for the B.R.A. Bihar University.

2. Learned counsel appearing on behalf of the
petitioner submits that taking into consideration the present state
of affairs of the University that the financial power has been
seized by the Additional Chief Secretary, Education Department,
Government of Bihar, it would be in the interest of justice that



the petitioner be allowed to file a detailed representation before the Additional Chief Secretary, Education Department, Government of Bihar for redressal of his grievance.

3. Keeping in mind the submissions of both the parties, at the very outset it is stated that the right to pensionary benefit is a constitutional right and as such cannot be taken away without proper justification.

4. In view of the facts stated, it is relevant to refer to various provisions of Constitution and the judgments passed by Apex Courts and other High Courts with regard to pensions and payments of pensionary benefits.

5. The word “Pension” is defined under Article 366(17) of the Constitution of India and it reads as follows:

“pension means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund”.

The Apex Court in the case of **Kerala State Road Transport Corporation v. K.O. Varghese** reported in **(2003) 12 SCC 293** has held that “the definition of “pension:” as given in Article 366(17) is not all pervasive. It is essentially a payment to a person in consideration of past services rendered



by him. It is a payment to a person who had rendered services for the employer, when he is almost in the twilight zone of his life.

6. Pension is the livelihood to a person and if for any reason, the pension is not paid, it is difficult to survive for the rest of the life, incurring various expenditures at the old age whose health becomes deteriorated on account of advanced age and thereby it is imperative to incur substantial amount for their medical and maintenance. The issue is no more *res integra*, in view of the law declared by the Apex Court in various judgments commencing from **Deoki Nandan Prasad v. State of Bihar and Ors** reported in (1971) 2 SCC 330 wherein the Apex Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It has further been held that the grant of pension does not depend upon any one's discretion. In **D.S Nakara and others v. Union of India** reported in 1983 AIR 130, Justice D.A. Desai, who spoke for the Constitutional Bench, in his inimitable style, considered the right of pension framing various issues, particularly defining pension and whether it is a property or not



etc, concluded that pension cannot be withheld except by authority under law. The same principle is reiterated in **State of Jharkhand v. Jitendra Kumar Srivastava** reported in (2013) 12 SCC 210 and **Dr. Hira Lal v. State of Bihar and others** reported in (2020) 4 SCC 346, while dealing with Rule 43(b) of Bihar Pension Rules with regard to claim of the petitioner for payment of provisional pension, gratuity etc. in terms of Resolution No. 3014 dated 31.7.1980. The Apex Court held that the State had no authority or power to withhold pension or gratuity of a government servant during pendency of the departmental proceedings.

7. Considering the specific submission made on behalf of the petitioner, this Court directs the petitioner to file a detailed representation for grant of reliefs as claimed for in the present writ petition before the appropriate authority.

8. The Vice Chancellor and the Registrar of the University are directed to take steps to persuade the Additional Chief Secretary, Education Department, Bihar to release the fund at least to make payment to the petitioner. The Additional Chief Secretary, Education Department may persuade the Additional Chief Secretary, Finance Department to disburse at least required fund for making payment to the petitioner.



9. The Registrar of the University is also directed to ensure to make payment of retiral dues and fix the pension of the petitioner in accordance with law within a period of four weeks from the date of filing of the representation / production of a copy of this order.

10. The present writ petition, stands, disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	31.08.2023
Transmission Date	N.A.

