IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.511 of 2021

Guru Sharan Singh, Son of Ram Prasad Singh, Resident of East of Rajendra Chowk, Hajipur, P.O. and P.S. - Hajipur, District - Vaishali at Hajipur, the retired store keeper, Raj Narain College, Hajipur.

... ... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Higher Education, Education Department, Government of Bihar, Patna.
4. The Vice Chancellor Baba Saheb Bhim Rao Ambedkar Bihar University, Muzaffarpur.
5. The Registrar, Baba Saheb Bhim Rao Ambedkar Bihar University, Muzaffarpur.
6. The Finance Officer, Baba Saheb Bhim Rao Ambedkar Bihar University, Muzaffarpur.
7. The Principal, Raj Narain College, Hajipur.

... ... Respondent/s

Appearance :
For the Appellant/s : Mr.Pranav Kumar, Advocate
For the Respondent/s : Mr.Ajay Kumar Rastogi, Sr. Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-09-2023

A Storekeeper in the Chemistry Laboratory of a college, who was appointed on 20.07.1979 and continued up to 30.09.2017; the date of superannuation, seeks pension as per the entitlement to draw the last pay, at the revised rates.

2. The learned Single Judge rejected the prayer finding that though the Hon'ble Supreme Court directed the scales of pay to be revised, as agreed upon by the State Government, the subsequent order issued by the Government, declined such revision to persons who were appointed without a sanctioned post being available and without a proper procedure for selection and appointment being followed. It was held that the appellant was not able to substantiate his appointment having been made to a sanctioned post and by a due procedure adopted by the College. The appointment order is silent about the procedure followed and the subsequent order makes his regularization in a vacant post; till then held by another. The appellant's claim was rejected and the decision of the Hon'ble Supreme Court was found to be inapplicable.

3. We heard the learned counsel for the appellant and the learned Government Advocate and also gave our anxious consideration to the records produced in the case.

4. On facts, briefly it has to be noticed that the appellant was appointed as a Storekeeper in the Department of Chemistry in Raj Narain College, Hajipur (for brevity 'College') by the Governing Body of the College on

20.07.1979. The appellant had a qualification of Bachelor of Science and he was regularized by the University by Memo No. B/2499 dated 05.04.1986 with effect from 25.03.1986. The appellant asserted that the post of Storekeeper in a college had to be granted the pay scale of Rs. 5500-9000, treating it to be equivalent to Assistants of Colleges and the University; which position was affirmed by the Hon'ble Supreme Court in **State of Bihar & Anr. vs. Sunny Prakash & Ors.; (2013) 3 SCC 559**. The appellant claimed fixation of pay, grant of Assured Career Progression as also fixation of his retiral benefits in the post; as per the revised pay scale applicable.

5. The University, however, resisted the prayer on the ground that the appellant's case was not covered by **Sunny Prakash** (supra), which is only applicable to persons who have been appointed against duly sanctioned posts after following the prescribed procedure of advertisement and selection by a Selection Committee. The appellant not having been appointed to a sanctioned post and the selection conducted by the Governing Body being not as per due procedure, the petitioner does not satisfy the criteria for fixation of pay in the revised scale. The service details of the appellant communicated by the Principal of the College also did not indicate a sanctioned

post. There was one sanctioned post of Storekeeper, which was occupied by one Shambhu Nath Singh, who worked till 1986. The service of the appellant was regularized against the said post with effect from 25.03.1986. We have to immediately notice that admittedly, even if the appellant was appointed to a post which was not sanctioned in the year 1979, in 1986, he was regularized in the sanctioned post when the earlier incumbent left the service.

6. The learned Single Judge had extracted the order of appointment produced as Annexure-R/1, to find that there is nothing stated in the said order regarding a due selection having been carried out. We cannot countenance the said finding, especially since there is no requirement that the appointment order should contain the details of the procedure for selection. We have also to keep in mind that the initial appointment was in the year 1979 and the appellant, but for producing the appointment order, cannot be asked to substantiate his claim that there was a due selection process initiated. The appellant has produced the appointment order and that would suffice to establish his appointment, whether it be in a sanctioned post or an appointment made to tide over the exigencies of the requirement for an additional Storekeeper, in

the College. However, it cannot, at all, be disputed that the regularization in 1986 was as against the sanctioned post and he continued therein till his superannuation.

7. We also have to notice **Sunny Prakash** (supra) in which the question arose whether parity in service conditions between non-teaching staff of the constituent colleges of a University and the Government staff, as agreed by the Government to the Federation of employees, was enforceable or not. The contention of the State that the agreement was not in accordance with the rules of executive business and hence, not a decision taken by the Government in terms of Article 162 read with Article 166(3) of the Constitution, was rejected by the Hon’ble Supreme Court. It was found that the meeting where the agreement was reached was attended by high-ranking officers of the State and the representatives of the Federation. Directions were also issued by the State Government to the Vice Chancellors and the Registrars of all Universities, subsequently, for implementing the Government decision. The commitment made by the State Government, as early as in 1987, to provide parity in service conditions, was directed to be implemented as directed by the High Court.

8. We see from the decision that the Storekeepers, as per the agreement, were to be treated as Assistants and pay scale given accordingly. There is no dispute insofar as the Storekeepers were to be given the revised pay scale of Rs. 5500-9000, from 1996, as per the agreement, which is at par with those in Government service.

9. Relevant in this context is Annexure P6, produced along with the writ petition, which is the provisional pay fixation statement of non-teaching employees of constituent colleges with provision of ACP/MACP in pursuance of the University Memo No. 445/R and 446/R dated 24.01.2017; subject to final approval of the Pay Verification Cell, Patna. The petitioner, who is at Sl. No. 2, is shown as Storekeeper with pay scale applicable at Rs. 5500-9000 as on 01.01.1996 and after first ACP at Rs. 6500-10500 as on 09.08.1999. By Annexure P/7, the University had forwarded the same to the Pay Verification Cell, Patna for its final approval, which communication is dated 30.01.2017. Annexure-P/8 is the pension papers of the appellant signed by the Principal of the College from which he superannuated as a Storekeeper, which contains the applicable pay as revised from 1996 onwards. The appellant, however, was confronted with Annexure-P/10, by

which his pension was reduced as applicable to the pre-revised pay.

10. Annexure-P/10 was challenged in the writ petition and it has to be noticed that it is an order passed, contrary to the submission furnished by the appellant for pension, as endorsed by the employer, the College from which he superannuated. There was also no prior notice given to the appellant and Annexure-P/10 is clearly in violation of principles of natural justice.

11. In the normal course, we would have directed a *de novo* consideration, which, as of now, would be frustrated insofar the Pay Revision Cell having revised its earlier order again without notice to the appellant. The entitlement slips issued by the Pay Verification Cell are produced by the respondent as Annexure-B and C along with counter affidavit dated 24.11.2021. Annexure-B certifies that appellant's pay scale starts with Rs. 5500-9000 on 01.01.1996, then moves to Rs. 6500/- presumably on grant of first ACP and as on 01.01.2016 is at Rs. 68000/-. However, the said entitlement slip dated 03.09.2021 has been revised by Annexure-C issued on 22.11.2021. The entitlement slip at Annexure-C has also been produced by the appellant as

Annexure1/A in the application for amendment filed as IA No. 3 of 2021, challenging the same.

12. The only ground on which the Pay Verification Cell has revised the pay scales applicable to the appellant from 01.01.1996, was the service details as forwarded by the College. It is also admitted that the service details indicated that the appellant has not been appointed to a sanctioned post and that there was nothing to show that he was selected by due procedure followed. We reiterate at the risk of repetition, that the appointment was made in the year 1979 and though such appointment was by reason of exigencies of requirement of an additional hand, it was regularized in 1986 in a sanctioned post, where he continued till his date of superannuation on 30.09.2017. The Government cannot now take a stand that the appellant was not appointed to a sanctioned post and his appointment was not following due procedure. He was paid salary while he was in employment and he was also allowed to retire and the Pay Verification Cell approved the revision of pay; which was also forwrded by the University in accordance with the decision in **Sunny Prakash** (supra).

13. **Sunny Prakash** (supra) directed pay parity as agreed upon by the State Government. The pay parity agreed

upon, was *inter alia* for the non-teaching staff of constituent colleges of the University, as applicable to the Government staff. There is no dispute as to the pay scales applicable to the Government staff, specifically Storekeepers as on 1996. The appellant was an employee continuing in a sanctioned post in the year 1996 and the Supreme Court judgment squarely applies to him. The Government cannot read into the agreement entered into with the Fedaration and the authoritative pronouncement of the Hon'ble Supreme Court, additional requirement of the initial appointment being in a sanctioned post and the appointment also having been made after due procedure. These were aspects which could have been considered at the time of regularization. When the appellant was regularized in a post, which was admittedly sanctioned and continued therein till superannuation; there can be no dispute raised regarding his initial appointment that too, after his superannuation, merely for the purpose of reducing his pension and denying him the benefits that flows from the agreement, which was directed to be implemented by the Hon'ble Supreme Court.

14. On the above reasoning, we find the judgment impugned to be erroneous and not founded on sound legal principles. We set aside the impugned judgment by

allowing the appeal and as a consequence, allow the writ petition by setting aside Annexure-1/A in I.A. No. 3 of 2021 filed in the LPA and Annexure-P/10 produced in the writ petition. The entitlement slip of Pay Verification Cell, Patna produced in the counter affidavit of the State at Annexure-B, shall regulate the revision of pay scales of the appellant, while in employment and also for the purpose of fixation of pension. The appellant shall also be entitled to the consequential benefits, including that of ACP/MACP.

15. The respondents shall compute the entire arrears payable to the appellant, as per the directions issued hereinabove and pay the arrears within a period of six months from today, failing which the appellant would be entitled to 6% interest on the arrears payable from the expiry of the six month period; which interest shall be paid by the State Government and would be enabled recovery from the officers, who committed the default in complying with the directions of this Court.

16. We issue the consequent directions only in the context of the appellant having retired in the year 2017 and the appellant having been paid only a paltry amount of pension on specious grounds of challenge to the initial appointment;

which was never taken up during the entire service of the appellant from 1979 to 2017, almost four decades.

17. The appeal is allowed and so is the writ petition with the above directions.

18. Parties shall suffer their respective costs.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
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