

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.585 of 2021

In

Civil Writ Jurisdiction Case No.4772 of 2019

Prof. Ram Nandan Prasad Sinha, Son of Late Bindeshwari Prasad Sinha,
Resident of Mohalla - V-34, Vidyapur, P.O. - Lohianagar, P.S. - Kankarbagh,
District - Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Higher Education,
Government of Bihar, Patna.
2. The Vice-Chancellor, Patna University, Patna.
3. The Registrar, Patna University, Patna.
4. The Hon'ble Chancellor this Excellency, the Governor of Bihar, Raj
Bhawan, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ramakant Sharma, Sr. Adv. Mr. Rajesh Kumar, Adv.
For the University	:	Mr. Nadeem Seraj, Adv.
For the State	:	Mr. Shashi Shekhar Tiwary, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-04-2023

Re. I.A. No. 1 of 2021 :-

The aforesaid interlocutory application has
been filed seeking condonation of delay of 333 days in
preferring the present appeal.

2. For the reasons stated in the application,



the delay in preferring this appeal is, hereby, condoned.

3. The I.A. No. 1 of 2021 stands allowed.

Re. L.P.A. No. 585 of 2021 :-

We have heard Mr. Ramakant Sharma, the learned Senior Advocate, assisted by Mr. Rajesh Kumar for the appellant and Mr. Nadeem Seraj for the Patna University. The State is represented by Mr. Shashi Shekhar Tiwary.

2. The appellant has questioned the judgment of the learned Single Judge dated 15th of October, 2020 passed in C.W.J.C. No. 4772 of 2019, whereby his prayer for a direction to the Patna University (*in short the University*) to pay pension to him under the General Provident Fund-cum-Pension-cum-Gratuity Scheme for his having put in 24 years of service in the University, has been rejected.

3. Shorn of details, the facts of this case are stark, which disentitles the appellant from getting



anything from the University as his post-retiral dues.

4. The appellant was appointed as a Lecturer in the Department of Geography of Patna University, sometimes in July, 1956. He was promoted to the post of Reader on 01.03.1974 and continued on such post till 1980.

5. The appellant had asked for an extraordinary leave, which was granted to him from 11.08.1980 to join the Department of Geography in Maharaja Sayajirao University, Barodra on lien, which was for two years. The appellant appears to have been appointed on the post of Professor at Maharaja Sayajirao University, Barodra permanently from where he retired in July, 1992. Since the lien granted to him was only for two years, within which time the appellant did not come back nor was he heard of by the University, the lien was cancelled with effect from 16.08.1982.

6. The appellant claims that without notice



to him, the lien could not have been cancelled and that he is entitled for being paid his Pension for 24 years of service that he had rendered as Lecturer and Reader in the Department of Geography in Patna University. Since the lien was wrongly cancelled, the appellant shall be presumed to be in continuous service of the University, entitling him to be paid pension under the General Provident Fund-cum-Pension-cum-Gratuity Scheme.

7. It appears from the records that the appellant had opted for C.P.F. Scheme and while he was still working at Baroda, he withdrew his contribution, thereby totally disentitling him from questioning the decision of the University in not paying him Pension for 24 years of service that he had rendered in the University under the General Provident Fund-cum-Pension-cum-Gratuity Scheme.

8. Mr. Nadeem Siraj, the counsel for the University has pointed out that Section 24(b) of the



Patna University Statutes provides that the provisions of Bihar Pension Rules shall be applicable when there is no specific provision in the Rules of the University. Rule 103 of the Bihar Pension Rules further clarifies that if a person remains absent unauthorizedly, the past service of such person shall be forfeited and such person shall not be entitled for any benefit under the Pension Rules.

9. The appellant had practically abandoned his service at Patna University and in token of his having accepted the fact, he also withdrew his contributions under the C.P.F. Scheme. This leaves him in an unenviable position of being disentitled from any further relief from the University.

10. Be that as it may, it would be necessary to record two other facts. When the lien of the appellant was terminated on account of his having not reported back to the University, he preferred a writ petition before this Court, which was disposed off with



a direction/request to the Hon'ble Chancellor to look into his grievance and pass orders accordingly. The Hon'ble Chancellor, in turn, referred the matter to the Vice-Chancellor of the University to take an informed decision in this regard.

11. Pursuant thereto, the Vice-Chancellor of the University rejected the claim of the appellant on the two grounds, namely, that the services of the appellant had been forfeited because of his not reporting back after the period of lien was over and that he had accepted and withdrawn the contribution under the C.P.F. Scheme.

12. The lien of the appellant had been terminated on 16.08.1982.

13. Mr. Ramakant Sharma however contends that the appellant would in any case be entitled to gratuity, which cannot be forfeited, as also his leave encashment entitlement.

14. Mr. Seraj, in turn, has submitted that



the gratuity is part of Pension and if the service of the appellant has been forfeited, there is no question of payment of any gratuity as no Pension is allowable to the appellant. With respect to leave encashment, it has been submitted that there no specific Statute governing the leave encashment of the employees of the University.

15. A Full Bench of this Court, in ***Arvind Kumar Singh Vs. The State of Bihar; (2018) 2 PLJR 933***, has held that as far as leave encashment is concerned, there is no statutory provision, rule or regulation, providing for encashment of earned leave.

16. The Bihar Service Code in Chapter-VI deals with general conditions of leave. Rule 149 and onwards of the Code provides for grant of various kinds of leave, like casual leave, special leave, medical leave, extraordinary leave etc. Under this Chapter, from Rule 227 on-wards, provisions have been made for grant of earned leave. Under Rule 227(1), it is



stipulated that the earned leave admissible to a Government Servant in permanent employment would be in accordance with Clauses - A and B, stipulated therein, and under sub-Section (2), it is contemplated that a Government Servant shall seize to earn such leave when the earned leave due to him has reached a particular level. The method and principle for calculating earned leave etc. are provided in the Rule. The Rule nowhere provides for any permission for leave encashment. This was provided only by an executive instruction, sometimes in the year 1993.

17. Thus, it was held by the Full Bench that so far as leave encashment is concerned, it is not provided for in the Pension Rules. A provision has been made in the Bihar Service Code for grant of earned leave and by an executive instruction of 1993, a provision has been made for encashment of earned leave and while making the said provision, a condition has been stipulated that an employee shall not be



granted encashment of earned leave till the finalization of the departmental enquiry or judicial proceeding.

18. If the terms and conditions with regard to encashment of leave is not governed by any statutory provision and when the same is granted by an executive or administrative decision of the State Government, then in the event of forfeiture of the entire service entitling pensionary benefits to the appellant, there could be no insistence for leave encashment as well.

19. We find force in the submission of the counsel for the University. The appellant has disentitled himself for any pensionary benefits including gratuity and leave encashment. The appellant has retired from Maharaja Sayajirao University, Barodra from where he has got his pensionary benefits.

20. Before parting, we also need to indicate that the exemplars shown by the appellant of many



persons being granted such benefit even after there services were terminated, cannot be followed as a matter of rule and law.

21. We do not find any error in the judgment passed by the learned Single Judge, rejecting the claim of the appellant.

22. There is no merit in this appeal and it is, accordingly, dismissed.

23. The parties are left to bear their own costs.

(Ashutosh Kumar, J)

(Harish Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	21/04/2023
Transmission Date	N/A

