

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1807 of 2017

In
Civil Writ Jurisdiction Case No.13881 of 2016

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Krishna Kant Sinha, S/o Late Shivram Prasad Sinha resident of Behind Petrol Pump of Pandeyjee on N.H. 28, Shyam Nagar, Gali No.2, P.S. Sadar, District -Muzaffarpur retired as Reader in the subject of Physics from M.P.S. College, Muzaffarpur, under B.R.A. Bihar University, Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Vice Chancellor, B.R.A. Bihar University, Muzaffarpur.
4. The Registrar, B.R.A. Bihar University, Muzaffarpur.
5. The Finance Officer, B.R.A. Bihar University, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shashi Bhushan Singh, Advocate
For the Respondent/s	:	Mr. Nikhil Kumar Agrawal, Advocate
		Mr. Yash Sahay, Advocate
For the State	:	Mr. Priyadarshi Mathur Sharan, AC to AAG-15

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

Date : 24-03-2023

Heard learned counsel for respective parties.

02. In the instant petition, appellant has assailed the order of the learned Single Judge dated 17.11.2017 passed in C.W.J.C. No.13881 of 2016. Appellant in his writ petition has prayed for the following reliefs:-

"(I) For issuance of an appropriate writ in the nature of MANDAMUS, commanding an directing the Respondent authorities to issue a notification to fix the full pension of the petitioner after



completion of 26 years two months of service in view of clause-6 of letter No. 38/37/80 P & PW(A) dated 06.04.2016 issued by Govt. of India in its Ministry of Personnel, P.G. and Pensions, Department of Pension and pensions Welfare, New Delhi whereby para-5 of FN No. 38/37/08-P&PW(A) dated 28.01.2013 issued by said department has been deleted by which the pension was to be reduced pro-rata where the pensioner has less than the maximum required for service for full pension as per rule 49 of C.C.S. (Pension) Rules, 1972 as applicable before 01.01.2006 and also a direction for make payment of arrears of difference of pension thereupon till date of payment which has been fixed on lesser amount as the petitioner has completed only 26 months 2 months and 6 days of service.

(ii) And for issuance of any other writ/writs, order/orders, direction/directions for which the writ petitioners are entitled under the facts and circumstances of the case"

03. Core issue in this *lis* is whether appellant is entitled to full pension with reference to his date of retirement on 31.01.1994 while working as a Reader in the BRA, Bihar University, Muzaffarpur or not?

04. It is necessary to take note of Statutes for the Grant of Retirement Benefits to Employees of the Bihar/Ranchi/Bhagalpur/Magadh/ L.N. Mithila/K.S.D. Sanskrit University (2) is relating to pension. Para 16 and 30 are reproduced hereunder:-



"16. An employee eligible for pension under any of the categories mentioned above, shall be granted pension according to the scales given in Schedule 'A' (i) if he ceased to be in University service between 01.04.1972 and 31.12.1972 and schedule A(ii) if he ceased to be in University service between 01.01.1973 and 30.03.1979. For those who ceased to be in University service from 31.03.1979 onwards, the scales given in Schedule A (iii) will be applicable. Any further change in the rate of pension as also relief in pension under the Bihar (Govt.) Pension Rules, will be equally applicable to the University employees.

30. In all matters, not specifically dealt within these Rules (both Appendix 'A' and 'B') the rules and orders applicable to the employees of Government of Bihar will apply mutatis mutandis to the employees of the University."

05. Learned counsel for the appellant submitted that State of Bihar from time to time have adopted the scheme of pension on par with the Central Government. On 06.04.2016, Central Government has taken a decision to extend the full pension to its retired employees and the same has not been given effect by the State Government to its retired employees. The Central Government extended full pension to its retired employees with effect from 01.04.1994 and similar orders have not been passed by the State Government. On the other hand, State Government has taken a policy decision on 23.09.2009 while giving effect from



01.01.2006 insofar as extending full pension. In this backdrop, the petitioner has presented this petition.

06. Learned counsel for the appellant vehemently contended that the State Government policy decision is discrimination with reference to the Central Government policy decision like Notification dated 06.04.2016 which has given effect from 01.01.1994 for the purpose of extending full pension. On the other hand, State Government has assigned the cut off date, namely, w.e.f. 01.01.2006 instead of 01.01.1994. Therefore, the grievance of the appellant is to rectify the anomaly which has crept in policy decision of the State Government insofar as extending full pension w.e.f 01.01.1994 instead of 01.01.2006.

07. Similar issue came up for consideration before this Court in CWJC No. 4649 of 2019 and connected cases (Yogendra Prasad Versus The Magadh University and Others and connected cases) and the Division Bench of this Court held in Para 41 of its judgment dated 20.12.2019 as under:-

"41. On consideration of the materials on record, the Court finds that teachers who retired after coming into fore the 6th PRC forms one homogeneous class and those who had already retired cannot be clubbed together as those retired before 1.1.2006 forms heterogeneous class, more so, there will be no end to the retrospectivity in the matter of extending similar treatment like the teachers who re-



tired before 1.1.2006. In a given situation it may be extended to the teachers who retired availing 3rd or 4th PRC, in such situation the Court cannot extend benefit which was available to the teachers who retired after 1.1.2006. The Court does not find substance in the submission of Mr. Purushottam Jha."

08. For the aforesaid reason the aforesaid issue cannot be examined by the writ court for the reasons that it is purely a policy decision of the State Government insofar as service condition of its employees including retired employees service conditions. Hon'ble Apex Court in the case of **P.U. Joshi & Others vs. Accountant General & Others** reported in (2003) 2 SCC 632 in Para 10 has held as under:-

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addi-



tion/substraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

09. The decision in **P.U. Joshi** (supra) was reiterated by the Hon'ble Apex Court in the subsequent decision of **Union of India Vs. Pushpa Rani & Ors.** reported in **(2008) 9 SCC 242**. Moreover, Apex Court in a recent decision in the case of **Hero Moto-corp Limited vs. Union of India and Ors.** reported in **(2023) 1 SCC 386** it is held that judicial review by the Courts in the policy matter is very limited that unless palpably arbitrary & irrational. These ingredients have not been pointed out by the Appellant.



10. In the light of these facts and circumstances, the writ petition cannot be entertained insofar as alteration of service condition that too in respect of assigned cut off date for the purpose of extending such service benefits to its employees or retired employees. Therefore, we find no infirmity in the order of the learned Single Judge dated 17.01.2017 passed in C.W.J.C. 13881 of 2016. Hence, the present Letters Patent Appeal No. 1807 of 2017 stands dismissed.

11. However, dismissal of the present Letters Patent Appeal would not come in the way of appellant to approach the concerned authorities.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

