

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16826 of 2022

Chandra Bhushan Mishra son of Late Shambhu Mishra, Resident of Village-Mangura, P.S.-Govindganj, District-East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Higher Education Department, Government of Bihar, Patna.
2. The Kameshwar Singh Darbhanga Sanskrit University through its Registrar, Kameshwar Nagar, Darbhanga.
3. The Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
4. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga (hereinafter referred as K.S.D.S.U.).
5. The Finance Officer, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
6. The Governing Body of Rishi Kulashram Sanskrit Mahavidyalaya, Sangrampur, West Champaran.
7. The Principal, Rishi Kulashram Sanskrit Mahavidyalaya, Sangrampur, West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Kripa Nand Jha, Advocate
For the University	:	Mr.BinayKumar Singh, Advocate
For the Respondent/s	:	Ms.Meera Singh, AC to GP 23

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 13-07-2023

Heard Mr. Kripa Nand Jha, learned counsel appearing on behalf of the petitioner; Mr. Binay Kumar Singh, learned counsel for the University and Ms.Meera Singh, learned AC to GP 23 for the State.

2. The petitioner has filed the writ petition for the following reliefs:-

“(i) For issuance of an appropriate direction, order or writ in the nature of mandamus commanding the respondents to pay the pension, and other retiral dues of the petitioner including the benefits of ACP,



MACP, differences of 7th Pay Scale including 10% interest over the entire due amount from the date it is due till the date of its actual payment.

(ii) For holding and declaring that the respondent cannot withhold the benefit of retiral dues of petitioner for a single day after his retirement specially keeping in view that the other employee of the different Up-Shastri Sanskrit colleges have been paid their entire retiral dues and in view of Memo No.311 dated 07.02.2016 and thus the similar benefit allowed to a similarly situated person cannot be denied to other similarly situated person which is even otherwise contrary to the Bihar State Litigation Policy, 2011.

(iii) For any other relief/reliefs to which the petitioner may be found entitled to in the facts and circumstances of the case.”

3. Learned counsel appearing on behalf of the petitioner

submits that the petitioner had retired on 31.12.2018, while he was posted as Lecturer (Vedacharya) in Rishi Kulashram Sanskrit Up-Shashtri Mahavidyalaya, Sangrampur, West Champaran. The pensionary benefit including the salary for the period, as mentioned in paragraph no.1 of writ petition, has not been given to him till date.

4. Learned counsel further submits that the petitioner's case is covered by the law laid down by the Hon'ble Apex Court in the case of ***D.S. Nakara & Others Vs. Union of India*** reported in ***(1983) 1 SCC 305***, in which it has been held that non-payment of pensionary benefit is denial of fundamental right of the petitioner and is in violation of Article 300A of the Constitution of India.



5. Learned counsel appearing on behalf of the State informs this Court that the fund has already been released and credited into the account of the University and it is up to the University to see that why petitioner has not been paid dues, as claimed by him.

6. Learned counsel appearing on behalf of the University informs this Court that no fund has been released by the State Government into the account of the University. Learned counsel further informs that the Registrar of the University has informed that the steps are being taken to make payment of all the admissible retiral dues, as claimed by the petitioner, within a period of six weeks.

7. Considering the rival submissions made by the parties as well as the fact that the petitioner had retired in the Year, 2018 and in spite of lapse of more than four years, no retiral dues have been paid to him. This Court deprecates the manner in which the Vice-Chancellor of the University has treated the retired employee of the University by not making him dues amount of the retiral benefits including the pension. The Hon'ble Apex Court has observed that pension is neither a bounty nor a matter of grace depending upon the sweet-will of the employer, nor an *ex gratia* payment.



8. This Court in *CWJC No. 6852 of 2021 (Lilawati Mishra vs. the State of Bihar and Ors.)* vide order dated **11.05.2022** have taken into consideration the issues regarding disbursement of retiral benefits. The apposite *paragraph nos.67 and 68* in this regard are reproduced hereinafter:

“67. Hon'ble, the Supreme Court has, as discussed above, held in several judgments that salary and equally post retiral benefits, which have been duly earned, are rights vesting in such employee. Denial of wages and post retiral benefits in the instant case is a classical case of infringement of Article 21, owing almost entirely to the indifferent attitude of the State towards its employees and former employees. In *M/s Shantistar Builders* (supra), the three primary actions of human existence have been listed, and in *D. K. Yadav* (supra), livelihood is recognized as a facet of Article 21.

68. The State, in its myriad of functions, is not only an employer but is also a lawmaker. The lawmaker has stipulated various methods to regulate employment, balancing the interest of both the employer and the employee, conceiving redressal mechanisms to ensure timely resolution of disputes, and evolving ways to protect the vulnerable party in a particular transaction. In the instant case and many other such cases, the State itself has laid waste to its own rules and regulations- calling into question the very basis of such laws and regulations.”

9. At this stage, learned counsel appearing on behalf of the University submitted that he will suggest the Vice Chancellor to take steps for making payment of retiral dues to the petitioner under different heads within a week, in peculiar facts of the case.



10. In case of failure, the Vice-Chancellor of the University will be liable to make payment of the retiral dues which has been claimed by the petitioner in the present case from his own pocket.

11. With the above observations/directions, the present writ petition is disposed of.

12. There will be no order as to costs.

(Purnendu Singh, J)

chn/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	19.07.2023
Transmission Date	NA

