

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.675 of 2018

In
Civil Writ Jurisdiction Case No.18197 of 2015

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1. The Vice Chancellor, Patna University, Patna Bihar.
 2. The Registrar, Patna University, Patna Bihar

... .. Appellant/s

Versus

- 1.1. Most. Rajani Sharma, Wife of late Dr. Prabhakar Bhatt, R/o Mohalla- Yog Vidya Sambardhak Mandal Campus, Boring Road Budha Colony, P.S. Kotwali, Patna, District- Patna- 800001
- 1.2. Dhriti Kumar, D/o of Late Dr. Prabhakar Bhatt, W/o Dhananjay Kumar, R/o Mohammadpur Lane, Mahendru, Patna- 6, P.S. Sultanganj, District- Patna.
- 1.3. Kriti Maharaj D/o of late Dr. Prabhakar Bhatt, W/o Shankar Maharaj, W/o Dhananjay Kumar, R/o Mohammadpur Lane, Mahendru, Patna- 6, P.S. Sultanganj, District- Patna.
- 1.4. Pragiti Bhatt, Son of late Dr. Prabhakar Bhatt, R/o Mohalla- Yog Vidya Sambardhak Campus, Boring Road, Budha Colony, P.S. Kotwali Patna, District- Patna- 8000001
2. The State of Bihar through its Principal Secretary, Education Department, Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 12070 of 2015

Prabhakar Bhatt Son of Late J.D. Rai, Resident of Vidya Sambardhak Mandal Campus, Boring Road, P.S.- Shri Krishna Puri, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Patna University through the Registrar, Patna University, Patna.
3. The Vice Chancellor, Patna University, Patna.
4. The Registrar, Patna University, Patna.
5. The Principal, Patna Science College, Patna.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 675 of 2018)

For the Appellant/s : Md. Nadim Seraj, Advocate

For the Respondent/s : Mr. Purushottam Kr. Jha, Advocate

Mr. Anil kr. Tiwary, Advocate

(In Civil Writ Jurisdiction Case No. 12070 of 2015)



For the Petitioner/s : Mr. Purushottam Kr. Jha, Advocate
Mr. Anil Kr. Tiwary, Advocate
For the University : Mr. Manish Dhari Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)
Date : 28-03-2024**

CWJC No. 12070 of 2015

Heard I.A. No. 2 of 2024.

2. For the reasons stated in the application and affidavit,
I.A. No. 2 of 2024 stands allowed.

3. In the result, any difference of salary of the deceased
-respondent is due, it is required to be calculated and disbursed to
the legal heirs of the deceased Dr. Prabhakar Bhatt within a period
of three months.

4. In view of the disposal of LPA 675 of 2018 and certain
observation, CWJC No. 12070 of 2015 does survive for
consideration. Accordingly, CWJC No. 12070 of 2015 stands
disposed of.

LPA 675 of 2018

5. With the consent of the learned counsels for the parties,
LPA No. 675 of 2018 is taken up for final disposal. The University
- appellant assailed the order dated 20.12.2017 passed in CWJC



No. 18197 of 2015. The respondent - Dr. Prabhakar Bhatt has prayed in the writ petition as under:

“(I) To direct and command the Respondents to make payment of post retiral benefit/dues with regard to leave Encashment remaining for 82 days to the petitioner which has not been paid earlier by the authority respondents, for which the petitioner is legally entitled in the interest of fair and natural justice.

(II) To direct the Respondents to provide the calculation chart with regard to payment of such leave Encashment to the petitioner who is legally entitled for the same.

(III) To pass any other consequential order/direction as be deem fit and proper in the backdrop of the fact and circumstances of case to which the petitioner may deem legally entitled to grant such reliefs.”

6. Question for consideration in the present *lis* is whether deceased respondent – Dr. Prabhakar Bhatt is entitled to arrears of salary from 31.01.2010 till 19.12.2012 or not and further is he entitled to other service benefits during the aforementioned intervening period or not?

7. One Professor (Dr.) Jagdish Prasad Sharma and Others filed CWJC No. 2330 of 2009 and analogous cases for implementation of Government of India policy decision dated 31.12.2008 insofar as age of retirement from 62 to 65 years.



Learned Single Judge had granted interim order insofar as continuing Professor (Dr.) Jagdish Prasad Sharma and Others in CWJC No. 2330 of 2009. Similarly, deceased respondent – Dr. Prabhakar Bhatt has also filed CWJC No. 1115 of 2010 and had the benefit of interim relief on 28.01.2010 in the light of interim order in CWJC No. 2330 of 2009. Faced with these facts and circumstances, State of Bihar and Another filed LPA No. 117 of 2010 against interim order passed Professor (Dr.) Jagdeesh Prasad Sharma and Others cases. In I.A. No. 552 of 2010, on 11.02.2010, order of the learned Single Judge dated 06.10.2009 passed in CWJC No. 2330 of 2009 has been stayed. In the result, deceased respondent – Dr. Prabhakar Bhatt was not entitled to continue to hold the post. In this regard, Principal of the College had sent a communication in the month of May 2010 asking him to handover the charge to Dr. Rani. He failed to obey the direction of the Principal and it has been made known to the Principal by Dr. Rani. However, deceased respondent – Dr. Prabhakar Bhatt illegally continued in service from 29.05.2010 till 19.12.2012 as stated by him. In this backdrop, whether deceased respondent is entitled to have the benefit of arrears of salary for the period from 31.01.2010 till 19.12.2012 or 31.01.2010 till 28.05.2010. By virtue of interim order deceased respondent - Dr. Prabhakar Bhatt



continued till 28.05.2010 in view of the communication made by the Principal to the effect of handing over the charge to one Dr. Rani. However, deceased respondent - Dr. Prabhakar Bhatt despite the order of his superior he continued to discharge duties of the post illegally, therefore, deceased - respondent is entitled to arrears of salary attached to the post having discharged the duties of the post by virtue of interim order dated 28.01.2010 from 31.01.2010 till 28.05.2010. If it is not settled, University is hereby directed to settle the same.

8. Deceased respondent is not entitled to beyond salary attached to the post of any service condition for the reasons that there is no interim order in his favour from 11.02.2010 onwards. It is submitted that State or University have not preferred appeal against interim order dated 28.01.2010 passed in CWJC No. 1115 of 2010, therefore, by virtue of Hon'ble Supreme Court final order which is reported in **(2013) 3 PLJR 278 (Jagdish Prasad Sharma vs. State of Bihar and Ors.)**, respondent is entitled to all service benefits. The same is not enure to the benefit to the deceased respondent for the reasons that initially interim order in favour of deceased Dr. Prabhakar Bhatt was dated 28.01.2010 and it is based on interim order passed in CWJC No. 2330 of 2009. Whatever the interim order granted in CWJC No. 2330 of 2009



has been stayed by the Co-ordinate Bench on 11.02.2010 in LPA No. 117 of 2010. In effect interim order in the case of deceased - respondent merges with the order dated 11.02.2010 passed in LPA No. 117 of 2010, therefore, Hon'ble Supreme Court's decision cited *supra* is not applicable to the facts of the case in hand (deceased - respondent).

9. When judicial pronouncement is that deceased - respondent and similarly situated persons are not entitled to continue in service and they are entitled to be superannuated at the age of 65 years has not been extended, in such an event deceased - respondent – Dr. Prabhakar Bhatt is not entitled to any service benefits beyond 31.01.2010 except arrears of salary for the period from 31.01.2010 to 28.05.2010.

10. Learned Single Judge has not appreciated factual aspect of the matter and so also interpretation of interim orders dated 28.01.2010 passed in CWJC No. 1115 of 2010 and such interim order is by virtue of interim order passed in CWJC No. 2330 of 2009. Thereafter, LPA No. 117 of 2010 arising out of CWJC No. 2330 of 2009 in which order of the learned Single Judge has been stayed on 11.02.2010, so as to allow the writ petition filed by the deceased - respondent – Dr. Prabhakar Bhatt. Accordingly, order



of the learned Single Judge is modified to the above extent. LPA is allowed in part.

11. At this stage, learned counsel for the deceased - respondent vehemently contended that deceased – respondent was entitled to arrears of salary till 19.12.2012. In support of such contention he relied on University’s communication dated 20.05.2010 by which he has been assigned certain examination work. The same cannot be appreciated for the reasons that Principal’s communication to hand over the charge to Dr. Rani was on 28.05.2010 that is after one week. Be that as it may there may be collusion between deceased - respondent – Dr. Prabhakar Bhatt and staff of the University for the reasons that Division Bench decision dated 11.02.2010 was made known to the University officials but still they failed to implement in respect of deceased respondent – Dr. Prabhakar Bhatt is concerned, therefore, the aforementioned contention of the respondent counsel stands rejected.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.04.2024
Transmission Date	NA

