

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4819 of 2022

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Prem Kumari, W/O Late Paras Nath Chaturvedi, R/o Mohalla- Salempur,
P.S.- Chapra Town, District- Chapra (Saran).

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Higher Education, Govt. of Bihar, Patna.
2. Kameshwar Singh Darbhanga Sanskrit University, Darbhanga through its Chancellor.
3. The Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.
4. The Pro- Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.
5. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.
6. The Principal, Bharat Mishra Sanskrit College, Salempur, P.S.- Chapra Town, District- Chapra (Saran).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhinav Srivastava, Advocate Mr. Binod Murari Mishra, Advocate
For the Respondent/s	:	Mr. Awadhesh Prasad Sinha, Advocate Mr. Amit Bhushan, Advocate
For the University	:	Mr. Deepak Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 15-01-2024

Heard Mr. Abhinav Srivastava, learned counsel appearing on behalf of the petitioner and Mr. Amit Bhushan, learned counsel for the State. The University is represented by Mr. Deepak Kumar, learned counsel.

2. The petitioner by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking a direction upon the respondents to ensure



payment of all the retiral benefits, as she was superannuated on 30.11.2020 from the post of Lecturer after completing the age of superannuation.

3. Mr. Srivastava, learned counsel for the petitioner submits that the entire claim of the petitioner of her retiral benefit is based upon the order of the Hon'ble Supreme Court rendered in Civil Appeal No(s). 6427 of 2019, arising out of SLP (C) No. 32619 of 2014, the copy of which has been marked as Annexure-3 to the writ petition.

4. For proper appreciation, it would be better to quote para nos. 3 and 4 of the judgment/order, which reads as follows:

“3. The aforesaid facts have not been disputed. In the peculiar facts and circumstances of the case, the ground of qualification could not have been availed to remove appellant from services particularly after lapse of three decades. Thus, we set aside the impugned order of termination of the services of the appellant. She be reinstated and be paid all the benefits which would have accrued to her had she been continued in the services.

4. Respondent No.6 has attained the age of superannuation, his right shall not be adversely affected to claim the salary as per the impugned order passed by



the High Court.”

5. A counter affidavit has been filed on behalf of the respondent State, duly sworn by the Deputy Director, Higher Education, Patna. A categorical assertion has been made in para.10 thereof that in the light of the judgment/order rendered by the Hon'ble Supreme Court, an opinion has been sought for from the learned Advocate General, Bihar, who specifically opined that there is a direction in favour of the present petitioner by the Hon'ble Supreme Court for payment of all benefits, which will include pensioner benefits also, hence she is entitled for pension.

6. This Court is conscious that the advice/opinion of the Advocate General is usually called for by the Government and the same are to be treated as an opinion given by his lawyer to his client. Section 126 of the Indian Evidence Act, 1872 protects the disclosure of such advice or opinion provided by the Advocate General to the Government. Therefore, it usually need not be disclosed. However, despite the fact, the legal opinion is not binding to the Government, but it will usually be honoured by the Government.

7. Be that as it may, needless to observe that the judgment/order of the Hon'ble Supreme Court is crystal clear



with regard to the entitlement of the petitioner wherein while the petitioner is directed to be reinstated, it has further been directed to ensure payment of all the benefits, which would have accrued to her had she been continued in the service.

8. Thus in view thereof, this Court has no hesitation to direct the respondent State as well as University to ensure payment of all the retiral benefits to the petitioner.

9. The entire exercise must be be completed preferably within a period of 12 weeks’ from the date of receipt/production of a copy of this order.

10. Accordingly, the present writ petition stands allowed with the aforesaid direction.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.01.2024
Transmission Date	NA

