

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1495 of 2017

In

Civil Writ Jurisdiction Case No.9783 of 2013

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1. The Patna University, Patna through its Registrar
 2. The Vice Chancellor, Patna University, Patna
 3. The Registrar, Patna University, Patna.

... .. Appellants

Versus

1. Birendra Kumar Gupta, Son of Late Shankar Lall Resident of C/O Shankar Bhusnalaya, Bakarganj, District - Patna
2. Dr. Paswan Kumar Mishra, Son of late Bindeshwar Mishra Resident of Village P.O. - Bishnupur Bathua, P.S. - Pusa, District - Samastipur
3. Salim Jawed, Son of Shri Sheikh Mukhtar Miyan Resident of Village - Paighamberpur, Post - Siwan, P.S. - Hussainganj, District - Siwan
4. Dr. Vani Bhushan Son of Shri R.S.P. Chaudhary Resident of Village - Manikpur, Mushahernia, P.O. - Andauli, P.S. - Parihar, District - Sitamarhi
5. Dr. Yogendra Kumar Verma, Son of Shri Baliram Prasad, Resident of Mohalla - Shiv Nagar, P.O. - Hilsa, P.S. - Hilsa, District - Nalanda
6. Shiv Shankar Singh, Son of Shri Narayan Prasad Singh, Resident of Village P.O. - Amaon, P.S. - Chainpur, District - Kaimur
7. The State Of Bihar Through The Principal Secretary, Education Department, Bihar, Patna

... .. Respondents

Appearance :

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

Mr. Afham Akhtar, Advocate

For the Respondent/s : Mr. (Dr.) Pratyush Kumar, Advocate

Mr. Jitendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 29-02-2024

The present Letters Patent Appeal has been filed
under Clause-X of Patna High Court Rules and the same is



directed against the order dated 04.08.2016, passed by the learned Single Judge of this Court in C.W.J.C. No. 9783 of 2013, whereby the learned Single Judge has allowed the petition filed by the original petitioners/ present private respondents.

2. Heard Mr. Md. Nadim Seraj, learned counsel for the appellants and Mr. Dr. Pratyush Kumar, learned counsel appearing for the private respondents/ original petitioners.

3. Brief facts leading to filing of the present Appeal are as under:-

3.1. The present private respondents/ original petitioners filed C.W.J.C. No. 9783 of 2013. In the said petition, petitioners challenged the notification contained in Memo No. 1210 dated 10.09.2012 issued by Patna University, Patna. In identical terms of notification, the Government of Bihar, vide its Resolution dated 31.08.2005 issued by the Finance Department directed the persons who have been appointed on or after 01.09.2005 in the services of the University are to be covered by the provisions of Contributory Pension Scheme, 2005. The impugned notification in the petition has been issued in pursuance of the letter of the Government of Bihar, vide Resolution dated 31.08.2005 whereby New Contributory Pension Scheme has been made effective from 01.09.2005.



3.2. The learned Single Judge after considering the provisions contained in the Patna University Act as well as the statute framed thereunder as well as after considering the Bihar Pension Rules, passed the impugned order whereby the notification dated 10.09.2012 was quashed and set aside and it was observed that the employees of the Universities will be governed by the old pension scheme and it will not, in any way, affect their right by the impugned notification dated 10.09.2012.

3.3. Against the aforesaid impugned order passed by the learned Single Judge, as observed hereinabove, the University has preferred the present appeal.

4. Learned counsel appearing for the appellants/University, at the outset, has placed reliance upon Clause- 11 of the Bihar Pension Rules which provides that where the pension scheme of the Government applicable in the Board, Corporation, Educational Institution and the University etc., the New Pension Scheme shall automatically be applicable. It is further submitted that Section 36 (5) of the Patna University Act, 1976 provides that a statute passed by the Senate shall have no validity until it has been assented to by the Chancellor. Learned counsel, thereafter, referred the provisions contained in Section 36(6) and, more particularly, *proviso* thereof which



provides that if there be any financial implication which may arise under the statute, it shall not be enforceable unless prior approval of the State Government has been obtained. Learned counsel for the appellants/University, therefore, urged that the learned Single Judge has not properly considered the aforesaid provisions contained in the Bihar Pension Rules as well as Patna University Act and thereby committed an error while quashing and setting aside the notification dated 10.09.2012 issued by the Patna University which was in identical terms of Resolution dated 31.08.2005. Learned counsel, therefore, urged that the impugned order passed by the learned Single Judge be quashed and set aside.

5. On the other hand, learned counsel appearing for the present private respondents/ original petitioners has opposed the present appeal. Learned counsel, at the outset, has placed reliance upon the order dated 08.01.2018 passed by a Division Bench of this Court in L.P.A. No. 2159 of 2016. It is submitted that the order impugned in the said appeal was challenged by the State Government also. However, the Division Bench of this Court has dismissed the appeal filed by the State Government and the said order has attained finality. Learned counsel, therefore, urged that the present appeal may not be entertained.



It is also pointed out from the aforesaid order dated 08.01.2018 that the Division Bench has also observed that the University is free to bring about changes even now. Thereafter, in the year 2020 necessary changes have been made by University. Learned counsel, therefore, urged that while the learned Single Judge has not committed any error while passing the impugned order, the present appeal be dismissed.

6. Having heard learned counsels appearing for the parties and having gone through the materials placed on record, it would emerge that the original writ petitioners challenged the notification dated 10.09.2012 issued by the Patna University which was in terms of Resolution dated 31.08.2005 issued by the Finance Department, Government of Bihar. It is a case of the appellants/University that pursuant to the Clause-11 of Bihar Pension Rules, Resolution dated 31.08.2005 issued by the Government of Bihar, would be applicable automatically and no amendment is required to be issued by the Patna University. It is also the case of the appellants/University that for financial implication, which may arise under the statute, the same shall not be enforceable unless prior approval of the State Government has been obtained.

7. At this stage, we would like to refer Clause 24 of



the Statute which provides as under:-

"24. Subject to the provisions of the Retirement Benefit Statutes-

(a) the preceding rules will stand amended in event of any change(s) to the corresponding provisions (s) in the Bihar Pension Rules,

(b) the Bihar Pension Rules, will apply, as amended from time to time, in all matters not covered by the preceding Rules so far as procedure regarding grant/payment of pension(s)/ gratuity is concerned."

8. The aforesaid provisions contained in Clause 24 of the Statute, specifically provides that Bihar Pension Rules will apply, as amended, from time to time in all matters not covered by the preceding Rules so far as procedure regarding grant/payment of pension(s)/ gratuity is concerned.

9. We are of the view that the learned Single Judge has rightly taken a view that corresponding changes and amendments have to be brought about by the University in conformity with the Bihar Pension Rules and it cannot automatically be made applicable as contended by the learned counsel for the appellants herein.

10. At this stage, it is relevant to note that the Coordinate Bench of this Court has passed an order on 08.01.2018 in L.P.A. No. 2159 of 2016, filed by the State of Bihar. In the said appeal, the State of Bihar also challenged the impugned



order herein passed by the learned Single Judge and the Division

Benche, while dismissing the appeal, has observed as under:-

"The judgment under challenge is dated 04.08.2016 passed by the learned Single Judge, who has allowed the writ application in favour of the petitioners/ private respondents, who happened to be employees of Patna University.

The issue raised in the present appeal is whether the learned Single Judge has committed an error by holding that the employees, who have been appointed after 01.09.2005 under the University, would be governed by the old Pension Scheme and not the new Contributory Pension Scheme. The stand taken before the learned Single Judge was that in terms of Section 36 (3) of the Patna University Act read with the statutes framed therein the Bihar Pension Rules are supposed to be applicable to the employees of the Patna University and in this regard attention of this Court has been drawn to clause 24 of procedural instruction regarding sanction and payment of retirement benefits admissible under the statutes for the grant of retirement benefit to the employees of Patna University, which reads as under:

"24. Subject to the provisions of the Retirement Benefit Statutes-

(a) the preceding rules will stand amended in event of any change(s) to the corresponding provisions (s) in the Bihar Pension Rules,

(b) the Bihar Pension



Rules, will apply, as amended from time to time, in all matters not covered by the preceding Rules so far as procedure regarding grant/ payment of pension (s)/ gratuity is concerned

Having perused the above statute or the procedural instruction and having read clause 24 therein, the Court does not get persuaded by the line of argument that whatever changes are brought about in the Bihar Pension Rules, it will automatically bring about amendment either in the statute or the rules relating to University. No doubt, since all the liabilities and payments of employees of University is made by the State of Bihar and, therefore, there is an object and purpose behind harmonizing the Pension Rules with the statutory rules of the University employees but the Court is unable to appreciate as to how the changes will automatically be read into the provisions of the pension relating to the University in question.

The learned Single Judge has rightly taken a view that corresponding changes and amendments have to be brought about by the University in conformity with the Bihar Pension Rules and it cannot be an automatic kind of application to the amended provisions in the Bihar Pension Rules. In fact, instead of wasting judicial time and energy on this litigation, the University is free to bring about changes even now. No interference is warranted with the order impugned of the learned Single Judge.

Appeal has no merit. It is dismissed."



11. It is not in dispute that the aforesaid order has attained finality. It is also not in dispute that the appellants herein, i.e., Patna University did not challenge the said order by filing S.L.P. before the Hon'ble Supreme Court nor review application was preferred before the Division Bench of this Court.

12. In view of the aforesaid facts and circumstances of the present case, we are of the view that the learned Single Judge has not committed any error while passing the impugned order dated 04.08.2016 passed in C.W.J.C. No. 9783 of 2013 and, therefore, no interference is required in the present appeal.

13. Accordingly, the present appeal is dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

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Uploading Date	
Transmission Date	

