

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1824 of 2020

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Hriday Prakash Gupta, Son of Late Lakshman Prasad Gupta, S-Block, 185
Dalmianagar, P.O. and P.S.-Dalmianagar, District-Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Higher Education, Govt. of Bihar, Patna
4. Veer Kuwar Singh University, Ara through its Registrar.
5. The Vice-Chancellor, Veer Kuwar Singh University, Ara.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 5641 of 2021

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Hriday Prakash Gupta, Son of Late Laxman Prasad Gupta, S-Block, 185
Dalmianagar, P.O. and P.S.-Dalmianagar, District-Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Higher Education, Govt. of Bihar, Patna.
4. Veer Kuwar Singh University, Ara through its Registrar.
5. The Vice-Chancellor, Veer Kuwar Singh University, Ara.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 1824 of 2020)

For the Petitioner/s : Mr. Sunil Kumar Singh, Advocate

For the State : Mr. Madhaw Prasad Yadaw (GP-23)



Mr. Rajesh Kumar Sinha, AC to GP-23
For the University : Mr. Rajesh Prasad Choudhary, Advocate
(In Civil Writ Jurisdiction Case No. 5641 of 2021)
For the Petitioner/s : Mr. Sunil Kumar Singh, Advocate
For the University : Mr. Rajesh Prasad Choudhary, Advocate
For the State : Mr. Samir Kumar, AC to GP-20

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 17-12-2024

1. Both the writ petitions have been filed by Hriday Prakash Gupta, hereinafter described as petitioner, claiming seniority, promotional pay-scale and change of nomenclature of his post.

2. For sake of convenience, I propose to narrate the facts stated by the petitioner in C.W.J.C. No. 5641 of 2021. The petitioner was appointed as Physical Training Instructor (PTI) on 5th of August, 1985 on the sanctioned post in Mahila College, Dalmianagar in the district of Rohtas. He joined the said college as Physical Training Instructor on 6th of August, 1985. In the year 1985, the college was taken over as a constituent unit of Magadh University, Bodh Gaya. Subsequently, after establishment of Veer Kunwar Singh University, Ara, the aforesaid college came under the jurisdiction of Veer Kunwar Singh University, Ara. The petitioner's service was regularized w.e.f. 6th of August, 1985.



Subsequently, he passed B.P.Ed (Bachelor of Physical Education) from Nagpur University on 28th of June, 1991. He obtained Post Graduate degree on 20th of May, 1994. The University Grant Commission (UGC) revised the pay-scale of PTI to Rs. 700-1600/- w.e.f. 1st of April, 1980 by an order, dated 15th of February, 1982. Subsequently, on 22nd of July, 1988, the U.G.C. revised pay-scale of Physical Education Personnel for maintenance of standards in higher education. In the said order, dated 22nd of July 1988, a formula was delineated for fixation of revised scale of pay of PTI. Further, it was directed that the pay-scale of PTI would be the same as that of the approved Teacher. Vide Annexure - 6, dated 29th of May, 1992, the Joint Secretary, Government of Bihar accepted U.G.C. pay-scale of PTI. Subsequently, on 18th of August, 1993, the Registrar of Veer Kunwar Singh University also accepted U.G.C. pay-scale on and from 20th of March, 1993. The Registrar accepted the pay-scale of Rs. 2200-4000/- w.e.f. 20th of May, 1994.

3. It is the case of the petitioner that as he passed BPED on 28th of June, 1991 and he is entitled to the said pay-scale on and from the date of BPED examination. But he was granted the pay-scale of Rs. 2200-4000/- w.e.f. 20th of May,



1994, whereas others were given the said benefit from the date of acquiring qualification. Subsequently, by virtue of Annexure - 10, dated 19th of February, 2009, the petitioner's pay-scale was revised to Rs. 8000-13500/- w.e.f. 1st of January, 1996 and thereafter Rs. 15600-39100/- with pay band of Rs. 6000/- w.e.f. 01.01.2006.

4. Further case of the petitioner is that by virtue of the letter dated 15th of December, 1982, the State Government accepted the proposal of the U.G.C. that the designation of PTI would be Director / Assistant Director of Physical Education and another university in the State of Bihar, namely, B.R. Ambedkar Bihar University, Muzaffarpur issued an order, re-designating the Physical Instructors as Director, Physical Education. In case of Veer Kunwar Singh University, the Respondents did not re-designate the petitioner as the Director of Physical Education.

5. Further grievance of the petitioner is that by issuing a letter dated 19th of October, 2006 (Annexure - 12), the Joint Secretary, U.G.C. informed the Registrars with the Ministry of Human Resources Department vide its letter dated 22nd of September, 2006 approved the revised Career Advancement Scheme for the Assistant Librarian, College Librarians,



Assistant Director of Physical Education, College Director of Physical Education. The revised scheme as approved by the Ministry of Human Resources Department was clearly stated in letter dated 19th of October, 2006. However, the petitioner was not paid in accordance with the direction of the said letter, dated 19th of October, 2006.

6. It is contended on behalf of the petitioner that by order dated 27th of August, 2010 (Annexure - 15), the Bihar Human Resources Development Department, Government of Bihar, revised the pay-scale of the officers and non-teaching staff of the university and constituent college w.e.f. 1st of January, 2006 and pay-scale of the Assistant Director / Director of the Physical Education revised to Rs. 15600-39100/- + ACP 6000, w.e.f. 1st of January, 2006. The petitioner retired from service on 31st of January, 2019, but he was denied the benefit of A.CP / MACP since he has been given U.G.C. pay-scale.

7. On the above factual circumstances, the petitioner has prayed for following reliefs: -

“1. That this is an application for issuance of an appropriate writ/directions for quashing the order contained in legal/36/16/1522/Esab/19 Memo no. dated 4.6.2019 passed by the Vice chancellor of Veer Kuwar Singh University, Ara whereby and



whereunder petitioner claim to re-designate him as Director Physical Education/Instructor Physical Education in Mahila College Dalmianagar, District-Rohtas has been rejected. The petitioner further prays to allow him to discharge duties till age of 65 years treating him to be teaching staff and also grant any other relief for which petitioner is found entitled in the facts and circumstances of the case.”

8. In C.W.J.C. No. 1824 of 2020, the petitioner prayed for issuance of a writ in the nature of Certiorari quashing the order contained in Memo No. Legal/36/16/1522/Esab./19, dated 04.06.2019 passed by the Vice Chancellor of Veer Kunwar Singh University, Ara, whereby and whereunder, petitioner's claim to redesignate him as Director, Physical Education/ Instructor, Physical Education in Mahila College, Dalmianagar, Rohtas was rejected.

9. By filing a supplementary affidavit on 29th of July, 2024, the petitioner has prayed for the benefit of 7th Pay Revision Commission, which was implemented in Universities of Bihar on 6th of March, 2019 w.e.f. 1st of January, 2016.

10. The Respondent Nos. 1 to 3 has filed a counter affidavit, stating, inter alia, that the issue of fixation of pay-scale and revision of pay were examined by the State Government in



view of the provisions contained in Section 35 of the Bihar State University Act and Patna University Act and on consideration of the entire relevant facts and considering the recommendation of Pay Fixation Committee the State Government implements the same. It was further submitted on behalf of the contesting Respondents that the university is the competent authority to fix the pay-scale of its employees in the scale prescribed by the State Government from time to time. The petitioner, who was admittedly appointed as a Physical Training Instructor, has been claiming revised U.G.C. pay-scale w.e.f. 28th June, 1991, on which date he acquired BPED degree and not from 25th of May, 1994.

11. It is contended by the Respondents that the U.G.C. pay-scale is admissible only to those PTIs, who possess the requisite qualification as prescribed by the U.G.C. for the alleged post being the employee of the University. The service record relating to the petitioner is with the university. The Education Department requested the university to provide the information for granting appropriate relief to the petitioner. However, in the absence of the relevant documents, it is not possible for the State Government to state anything about the claim of the petitioner.



12. The petitioner has denied the statement made by the Respondent Nos. 1 to 3 in their counter affidavit in the rejoinder filed by him on 10th of July, 2023.

13. A separate counter affidavit has been filed on behalf of Respondent Nos. 4 and 5, the Registrar and Vice Chancellor of Veer Kunwar Singh University, Ara, respectively, stating, inter alia, that the petitioner has filed the instant writ petition claiming senior scale of Rs. 10000-325-15200/- under the Career Advancement Scheme w.e.f. 12th of July, 1998 and thereafter consider and promote him on the post of Deputy Director of Physical Education w.e.f. 27th of July, 2003 under the said Scheme. Further prayer of the writ petitioner is to make payment of the difference of arrears of salary on account of grant of promotion in the senior scale of Deputy Director of Physical Education.

14. It is submitted on behalf of Respondent Nos. 4 and 5 that the petitioner had earlier filed C.W.J.C. No. 7033 of 2016 before this Court which was disposed of by a Coordinate Bench vide order dated 2nd May, 2018 with the direction upon the petitioner to file representation before the Vice Chancellor of the university and in compliance thereof the petitioner submitted his detailed representation which was placed before the Syndicate



of the University. The Syndicate of the University authorized the Vice Chancellor to take decision with regard to the claim of the petitioner and the Vice Chancellor after giving the petitioner an opportunity of being heard, passed a reasoned order on 4th of June, 2019 and the order was communicated to him. In the said reasoned order, it was stated by the Vice Chancellor that no sanctioned post of Director, Physical Education is available in the university as well as in Mahila College, Dalminagar. So far as designation as Director, Physical Education by other university is concerned, it is not binding upon the Veer Kunwar Singh University while there is no such post in this university. Now, Shri Gupta has retired from service, attaining 62 years of age. It is also settled principle of law that nobody can be appointed or designated without sanctioned post. Thus, no merit is found in the claim of Shri Gupta and the said is rejected on the basis of reasons as stated above. It is further averred by the contesting Respondents that in view of the above decision, the subsequent writ petition are not maintainable. All other claims of the petitioner was refuted by the Registrar and Vice Chancellor of the University.

15. The petitioner has filed a second supplementary affidavit on 29th of July, 2024. In the said supplementary



affidavit, it is stated by the petitioner that 7th Pay Revision was implemented in the Universities of Bihar on 6th of March, 2019 w.e.f. 1st of January, 2016. In this revision, Assistant Director, Physical Education, who were in the pay-scale of Rs. 15600-39100/- with grade of Rs. 6000/- was revised to Rs. 57700/- and their senior scale and selection grade was revised to Rs. 68900-79800/-. The petitioner is entitled to get the said revised pay-scale.

16. The Respondent Nos. 4 and 5 finally contended by a counter affidavit to the rejoinder filed by the petitioner dated 7th of October, 2024 as hereunder:-

(i) There is no post of Director / Assistant Director, Physical Education in Veer Kunwar Singh University or its constituent colleges, so petitioner is not entitled to the said post.

(ii) Career Advancement Scheme is applicable only to the Teachers. The petitioner being a non-teaching staff is not entitled to Career Advancement Scheme.

(iii) The petitioner was eligible for U.G.C. pay-scale on and from 20th of May, 1994 after obtaining its graduate degree in Physical Education and the said U.G.C. pay-scale have been granted to him. He is not entitled to any other relief. So the writ petition may be dismissed.



17. The objections raised by the above-named Respondents delineated above are decided below: -

(i) It is needless to say that Ministry of Human Resources Development, Department of Education, Government of India Notification No. F-1-21/97 U.I., dated 22nd of July, 1988 is applicable to all State and Union Territories including the State of Bihar. The said notification relates to revision of pay-scales of Teachers in Universities and Colleges and other measures for maintenance of standards in higher education.

Clause – 4 of the notification states: -

“4. The revised pay-scales of Librarian and Physical Education Personnel are the same as are approved for teachers. The revised scales will be admissible only to those Librarians and Physical Education Personnel who have been sanctioned the scales of pay Lecturers and Readers and Professors under the 1973 revision namely Rs. 700-1600, Rs. 1200-1900 and Rs. 1500-2500. The cases of existing Librarians and Physical Education Personnel who are on scales of pay lower than Rs. 700-1600 will be considered separately after making an assessment of their existing scales of pay, the qualifications and other relevant factors obtaining in various states. The revised scales of pay now approved are not



therefore, admissible on the basis of designations alone; they have to be sanctioned keeping also in view the existing scales of pay. Since the qualifications method of recruitment and criteria for career advancement are slightly different in the case of Librarians and Physical Education Personnel, in the light of the requirements of their profession, the relevant provisions of the scheme as far as they relate to these matters are marginally different from those applicable to teachers. The revised pay scales and the relevant conditions relating to recruitment, qualifications and career advancement approved by the Government for Librarians and Physical Education Personnel are given in Appendix II to this letter.”

18. It is rightly submitted by the learned Advocate for the petitioner that the petitioner has already got the above-mentioned pay-scale.

19. In support of his contention, he refers to Annexure-11, by virtue of which the petitioner got the pay-scale of Rs. 8000-13000/-, w.e.f. 1st of January, 1996.

20. The learned Advocate on behalf of the petitioner next refers to Clause – 8 of Appendix – II of the above-mentioned notification. Clause – 8 deals with Career Advancement Scheme. It states: -



“ 8. Every Assistant Librarian and Assistant Director of Physical Education in a University and a Librarian and Director/Instructor of Physical Education in a College, who is in the scale of pay of Rs. 2200-4000 will be placed in a Senior Scale of Rs. 3000-5000 if he/she has:

(a) completed 8 years service after regular appointment, with relaxation as provided in para 7 above;

(b) participated in two refresher courses/summer institutes, each of approximately four weeks; duration or engaged in other appropriate continuing education programme of comparable quality as may be specified by the UGC and

(c) consistently satisfactory performance appraisal reports

Explanation

All existing incumbents of these posts in the Universities/College, who are in the scale of pay of Rs. 700-1600 and who have completed 8 years of service on 1.1.1986 will be placed through a process of screening/ Selection as indicated in para 22 of Appendix I to this letter, in the scale of Rs. 3000-5000. The benefit of service provided in para 7 will be available for the initial placement also.”

21. Thus, it is submitted by the learned Advocate for



the petitioner that the petitioner has received the senior scale of pay. He has also completed more than 8 years of service after regular appointment. Therefore, his designation ought to be changed as Director, Physical Education in Veer Kunwar Singh University, Ara.

22. It is also contended by the learned Advocate on behalf of the petitioner that the university denied to designate him as the Director, Physical Education as there was no sanctioned post in the said university.

23. In this regard, the learned Advocate for the petitioner has placed an order passed by the B.R.A. Bihar University, Muzaffarpur where the nomenclature of Physical Instructor has been changed to the Director, Physical Education.

24. In view of such circumstances, objection no. 1 raised by the Respondent Nos. 4 and 5 is disposed of with the direction that the university will place the case of the petitioner before the Syndicate at the earliest, preferably within a period of two months from the date of communication of this order with proposal for change of designation of the petitioner to Director, Physical Education provided he satisfies all other requirements laid down in the notification issued by the Ministry of Human Resources Development, Department of Education, Government



of India on 22nd of July, 1988. If required, the university shall take administrative approval of the State Government to change the nomenclature of the petitioner and if necessary to create a new post of Director, Physical Education of the University.

(ii) With regard to the objection no. 2 raised by the Respondents, the learned Advocate on behalf of the petitioner refers to Rule-8 of the said notification, which has been quoted above.

In view of the said Rule-8 regarding Career Advancement, the objection no. 2 raised by the university that Career Advancement Scheme is applicable only to Teachers has no leg to stand. The aforesaid objection no. 2 is therefore considered and set aside.

(iii) As regard objection no. 3, it is contended by the petitioner that he obtained Graduate degree in Physical Education from Nagpur University in the year 1989, therefore, he is entitled to get U.G.C. pay-scale from 1991 and not from 20th of May, 1994 as observed by the Respondents.

This matter is also referred to the Syndicate of the Respondent University with a direction to take appropriate decision regarding the date of entitlement of U.G.C. pay-scale by the petitioner. Such exercise shall be done also within a



period of two months from the date of communication of this order.

25. With the aforesaid direction, the instant petition stands disposed of, on contest.

26. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	04.12.2024
Uploading Date	17.12.2024
Transmission Date	N/A

