
(2005) 08 PAT CK 0107
In the Patna High Court
Case No : CWJC No. 8723 of 2003

Anirudh Sao

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Citation : (2005) 4 PLJR 250

Hon'ble Judges : Shashank Kumar Singh, J

Bench : Single Bench

Advocate : Nagendra Kumar in 8723 to 8730, 8947 to 8949, Mr. Chandra Prakash Singh in 9734, Mr. Chakradhari Sharan Singh in 11816, Mr. Niranjana Kumar in 12044, 12067, Mr. Ashok Kumar Singh in 2157 and Mr. Rajeeva Roy in 11744, Yugal Kishore, for the Appellant; Tej Bahadur Singh, for the Respondent

Judgement

Shashank Kumar Singh, J.

Order dt. 2.8.2005

1. Today, third supplementary counter affidavit has been brought on record which has been affidavited by the Secretary, Department of Human Resources (Higher Education) Government of Bihar on his own behalf and on behalf of Chief Secretary as directed by this Court. In the aforesaid counter affidavit it has been contended that as far as provident fund dues are concerned, one instalment has already been released and the second instalment regarding the remaining dues would be released which would be paid to them latest by October, 2005. In view of same said grievance stands resolved.

2. As far as arrears of salary is concerned, the counter affidavit in para-graph-6 contends that though some demand has been received by the University but said details does not show yearwise statement of account showing receipt from the Government, amount disbursed, balance amount to be disbursed and the persons who would be beneficiaries of the same duly audited and authenticated by the Chartered Accountant.

3. Counsel for the University contends that though detail has been provided but not audited and authenticated by the Chartered Accountant which he contends would be done within a period of two months from today and handed over to the Higher Education Department. Counter affidavit further goes to show that Rs. 100 crores has already been earmarked for the said purpose and if need arises for which purpose Higher Education Department has already made additional provision for 100 crores which can be used to meet requirement of legitimate arrears of all the Universities of Bihar. It further contends that the department proposes to make such provision in coming financial year also if need arises after getting detailed report as stated above.

4. It is contended that the Government will make proportionate allotment to the Magadh University after getting report as mentioned above. As the learned counsel for the University agrees for the same and as he contends that the said report would be made available to the department within a period of two months from today, let follow up action be done immediately thereafter.

5. Counsel for the petitioners contends that though the stand of the department is that 10 crores and odd has already been released but so far provident fund account is concerned, as per their information till date not a single paise has been deposited in the provident fund account of some of the writ petitioners on which counsel for the University contends that in view of some earlier direction of this Court, the employees of the University who had retired from service or are dead, their provident fund account has been first made up to date and remaining money has been proportionately sent to the College in question for deposit in the provident fund account of the employees. This aspect has been controverted as it has been contended that a permanent employee in a constituent college has his provident fund account and the University has to release provident fund money in the said account. As such, sending the same to the Principal of the College for disbursement does not appear to be a fair step.

6. This Court can direct the University to file an affidavit in this regard sworn by the Registrar of Magadh University showing total disbursement of ten crores and odd which has already been released in favour of the petitioners for payment of provident fund dues.

7. List this matter for admission on 9.8.2005 on the top of the list.

Order dt. 9.8.2005

Heard learned counsel for the petitioner and for the State.

8. All the matters were taken together as all the petitioners are teaching or non-teaching staff in the Colleges under Magadh University and have moved this Court for payment of their provident fund dues and arrears of salary. Earlier by order dated 21.2.1994, C.W.J.C. No. 8889 of 1992 was disposed of by a speaking order in which this Court taking the exception the conduct of the University and respondent State rather condemning their attitude had issued the specific

direction to the University to take all steps to calculate the arrears and the State Government to issue requisite amount so that the provident fund and arrear of salary would be paid.

9. The contention of the petitioner is that in spite of the said specific order the same has not been paid.

10. In this regard learned counsel for the State has also brought on record the subsequent developments and the order dated 2.8.2005 and in compliance thereof the 3rd supplementary counter affidavit filed on behalf of the respondent Secretary Higher Education in view of the undertaking which is quoted hereinbelow:

"that the total amount of Rs. 10,39,51,053/- has already been released vide Department letter No. 578 dated 5.4.2005.

"that it is respectfully stated and submitted that in view of letter under Memo No. 632 dated 12.4.2005 it has been made clear that the amount released amounting Rs. 10,39,51,053/- is confined for the payment of provident fund dues "Bakayan Bhavishya Nidhi Ki Rashi Ka Bhugtan Hi Isme Sammalit Hai".

"that it is respectfully stated and submitted that as apparent from paragraph No. 2 of the letter under memo No. 643 dated 13.4.2005 it is very clearly been stated that the money released amounting Rs. 10,33,51,053/- has been absolutely confined for the payment of the dues of Provident Fund amount and not for any other purposes at all in any circumstances, whatsoever".

"that this affidavit would also be affective for other analogous cases".

11. In view thereof, now as far as fund is concerned the pautity of the same, is now satisfied. Now, it entirely depends on the conduct of the University and the State i.e. the University has to furnish all accounts, showing amount received from the Government, amount disbursed, the balance to be disbursed and the person to whom the said amount is to be disbursed, admittedly, audited and authenticated by a Chartered Accountant. Once the said part is complied by the respondent University, the State respondent have undertaken to release the amount for which averments have been made as quoted above in the above counter affidavit.

12. The respondent University is thus directed to comply with the same on earnest even if the strike continues by engaging additional hands for the purpose of the said account being audited by the authorised Chartered Accountant, if necessary, so that the legitimate dues of the employees of the Universities i.e. the teachers and non-teaching staffs which are pending since last decades be satisfied and the matter be brought to an end.

13. This Court feels that in view of the delay which has already occurred the same exercise be completed within a period of two months.

14. One another aspect which has been pointed out to the Court by the

petitioners is that from the affidavit of the State respondent it appears that the part of the provident fund dues have been released but till date not a penny has been disbursed in favour of the any person.

15. This Court had directed the counsel for the University to verify the aforesaid fact. Today it has been communicated that University on its part have disbursed the entire amount for the purpose of which the amount is received by the concerned college for disbursing and the utilisation certificate has already been received from the department of the Universities and 29 out of the 44 colleges. From the rest it is expected that as there is strike of the non-teaching staff the same could also be received but it has been contended by the counsel for the University that specific instruction has been issued that if the same is diverted or in any way utilised by the college from the department concerned in any other matter then for the purpose of same is released punitive action including prosecution would be initiated against the persons responsible for the same.

16. This Court in view of the aforesaid aspect and in view of the detailed affidavit of the State and the undertaking by the University that they would be entering into serious exercise. This disposes of the writ application in terms indicated above.

17. Let the entire exercise be completed within two months from the date of receipt/production of a copy of this order.

18. However, this Court in the special fact of this case as the dues of the petitioner have been there from decades, granted liberty to the petitioner to draw the attention of the Court if the compliance is not made on behalf of the University within the time framed so that appropriate order can be passed by the Court if such an affidavit brought on record. Let a copy of this order be handed over to the counsel for the Magadh University.