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**(2001) 12 PAT CK 0007**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 6780 of 2001**

Gopal Lall

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 16-12-2001

**Acts Referred:**

**Citation :** (2002) 1 PLJR 445

**Hon'ble Judges :** P.K. Deb, J

**Bench :** Single Bench

**Advocate :** Sanjeev Kumar Mishra, Sanjay Kumar Mishra and Shailesh Kumar Mishra, for the Appellant; Partha Sarthy and Navneeti Pd. Singh for University, for the Respondent

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## Judgement

P.K. Deb, J.—The grievance of the Petitioner is that of withdrawal of his pensionary benefit which was granted to him earlier. The Petitioner on 14.7.1947 joined as Lecturer in R.K. College, Madhubani which was affiliated to old Patna University and on 21.11.1955 the Petitioner joined as Lecturer in old Bihar University and was posted as Post Graduate Lecturer in the Department of Commerce at Bhagalpur, till 20.4.1975. On 21.4.1975 the Petitioner joined as Professor and Head of the Department of Commerce in L.N. Mithila University, Darbhanga on the recommendation of the Bihar Public Service Commission. On 1.2.1986 the Petitioner superannuated while working in the post of Professor and Head of the Department of Commerce in L.N. Mithila University, Darbhanga. During the service period of the Petitioner the Triple Benefit Scheme came in its force and as such Statute was approved on 18.11.1980.

2. On 25.12.1980 the University issued letters for option regarding the Triple Benefit Scheme. The Petitioner opted for Appendix-A of the Scheme which provided for G.P.F. Scheme-cum-Pension and Gratuity. On 21.4.1975 the Petitioner was the University Professor and Head of the Department of Commerce in L.N. Mithila University, Darbhanga. On the option being given by the Petitioner the same was approved. At the relevant time when the option was

given the College where the Petitioner was appointed was under Magadh University and the option was given by the Petitioner on 14.2.1981 which is an admitted fact. But then on 25.11.1982 Statute for Pensional benefits of the University employees had been amended and after that amendment as per Clause 4 of that Statute again option was asked from the Petitioner while he was under L.N. Mithilla University, Darbhanga and on 21.2.1983 the Petitioner opted for Appendix-B of the Triple Benefit Scheme which was for Contributory Provident Fund etc. On retirement the Petitioner was paid benefits of Contributory Provident Fund etc. as per Appendix-B. But then again as per the amended Statute on the basis of the letter issued by the Vice Chancellor of the University the Petitioner although, retired had given option for Appendix-A again which he had given earlier while serving in Magadh University. The Petitioner made several representations and then earlier retirement benefit under Appendix-B had been changed and the Petitioner was given pensionary benefit with G.P.F. etc. and the earlier contribution under Contributory Provident Fund made by the employer had been deducted or deposited from the side of the Petitioner and his pensional benefit continued. But on the basis of letter issued by the Chancellor, the pensionary benefit of the Petitioner had been withdrawn. Hence, this writ petition.

3. So, the position remains that under the old Statute the Petitioner had already given option under Appendix-A. But when the Statute being amended and again the Petitioner was asked for giving option he gave option under Appendix-B. But then again the position changed and further option was asked for from the Petitioner who had become retired by this time and he reiterated earlier option under Appendix-A. As the matter was considered by the Authorities the Petitioner was given pensionary, benefits and the earlier contribution from the employer in the Contributory Provident Fund part have been recovered from the Petitioner.

4. The only question remains as to whether the second option given by the Petitioner under Appendix-B as per Rule 4 of the Statutes for the Grant of Retirement Benefits to Employees of the Bihar/Ranchi/Bhagalpur/Magadh/L.N. Mithila/K.S.D. Sanskrit Universities (hereinafter to be referred to as the "Statutes") was a valid one on which after retirement he was granted pensional benefits under Appendix-B, although, afterwards the same had been changed by the employees itself.

5. In the present case it is to be construed whether the Petitioner's case falls within the purview of Rule 4 of the amended Statute which came in force on 25.11.1982 or his case would be governed by Rule 5 of the Statute. Admittedly the Petitioner had been transferred from erstwhile University and absorbed in L.N. Mithila University, Darbhanga as per recommendation of the Bihar Public Service Commission and these are admitted facts. Under Rule 5 of the amended Statute it has been specifically mentioned that once option had been given under the old Statute, such employee will not be able to change over from the Scheme they have already opted under the old University and practically on that ground earlier the pensionary benefits given under Appendix-B have been changed to

Appendix-A Scheme in respect of the Petitioner, although, it appears that further option have been asked from the Petitioner when he had already been superannuated. Once the case of the Petitioner has been admitted even under the amended Statute by accepting his option given under the old University, then definitely the University is estopped from withdrawal of pensionary benefit of the Petitioner as per Appendix-A on the basis of the separate option given under Rule 4 of the amended Statute. Leaving aside the question of further option being asked and the Petitioner reiterated his old option under Appendix-A.

6. In such circumstances, definitely the employer University is estopped from changing its stand. The question of promissory estoppel in this respect was considered by a Bench of this Court in two writ petitions here conjointly being C.W.J.C. No. 12681/2000 and C.W.J.C. No. 12878/2000. But the factual aspect was totally different than that of the present case and from the judgment given it appears that the provision of Rule 5 of the Statute had never been considered and in those cases practically option being given under the old University had not been at all in question. So, that judgment passed in favour of the University can in no case be applicable in the present situation and circumstances of the case.

7. The question of promissory estoppel may be construed as has been submitted from the side of the learned Counsel for the University to the effect that even if it is constituted that the second option asked under the amended Statute as per Rule 4 of the Statute and the Petitioner had opted for Appendix-B Scheme then he is estopped from questioning his own option and reverting back to his earlier option given under the old University as per the amended Statute. The question of promissory estoppel would come and would be applicable to both the sides. If the second option asked for from the Petitioner was in accordance with Rule 4 of the amended Statute then such option even if given by the Petitioner can be said to be a valid option as under Rule 5 he is debarred from changing his option given earlier. The University authorities ought not to have acted on the second option given by the Petitioner under the amended Statute and practically the University authorities have rectified the position when they have reverted back in case of the Petitioner giving him pensionary benefit on his own option in the old University as per rule Statute of Triple Benefit Scheme. Rather, the University authorities are estopped from changing their stand when the position and circumstances of changing Appendix-B to Appendix-A in case of the Petitioner which has got reinforcement from the statutory provision itself. When the second option given by the Petitioner in Appendix-B is not sustainable by the Statute then the University authorities are estopped from sticking to his second option giving go by from earlier option given under the old Statute.

8. In the facts and circumstances of the case, it is clear as stated in the earlier paragraphs that the Petitioner's case is totally governed under Rule 5 of the new Statute and as such when the University is not empowered to change the earlier option given by the Petitioner in the old University, then acceptance of second option at Appendix-B is a nullity in the eye of law.

9. In that view of the matter, I hereby hold that the Petitioner is entitled to get all pensionary benefits as per Appendix-A of the Triple Benefit Scheme which the University had already accepted and given benefits to him and stoppage thereof by the University authorities in the year 2000 is illegal on the face of it.

10. This writ application is disposed of directing the University authorities to revive the pensional benefits of the Petitioner under Appendix-A of the Triple Benefit Scheme and the Petitioner shall be given all arrears of pensionary benefits together with Interest @ 9% per annum from the date of due till the date of realisation.