

(2015) 04 PAT CK 0099

In the Patna High Court

Case No : Letters Patent Appeal No.1401 of 2012 In Civil Writ Jurisdiction Case No. 13892 of 2011

Jagmohan Giri

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Citation : (2015) 3 BBCJ 23 : (2015) 3 BLJud 230

Hon'ble Judges : Mr. Navaniti Prasad Singh and Mr. Jitendra Mohan Sharma, JJ.

Bench : Division Bench

Advocate : Mr. J.N. Mattin Sr. Advocate, for the Appellants; Mr. Vipin Kumar Advocate, for the University; Mr. Rajesh Kumar Advocate, AC to G.A IV, for the State

Final Decision : Disposed Off

Judgement

Mr. Navaniti Prasad Singh, J. (Oral)—We have heard learned counsel for the appellant, learned counsel for the University and learned counsel for the State.

2. The appellant was a writ petitioner before the learned single Judge. He has filed the writ petition for a direction to pay arrears of his salary for the period 28.07.2002 to February 2009, and up-to-date along with the interest as he was working on the post of Lab in-charge in the College of Commerce, Patna which is a constituent Unit of Magadha University. The learned single Judge, without adjudication, disposed of the writ petition merely by an order that the Vice Chancellor has worked out the salary due for the period 28.07.2002 to 28.08.2009 at Rs. 6,17, 083/- which should be immediately paid. The writ petitioner has contested this position in as much as the counter affidavit of the University stated that though the writ petitioner was working as a Lab in charge since 1992, the auditor found that he was appointed as Lab boy in the year 1968 and as such his arrears of salary as noted above would be paid on that pay scale. To say the least absurdity it writ large on the face of the record.

3. The writ petition contained annexures being orders of the Registrar of the university approving the writ petitioner's appointment as Lab in-charge on which post he has been working since 14.06.1992. No one had challenged that position. Even during the pendency of this proceeding when the writ petitioner, who is appellant, retired the letter of the Principal of the College to the University shows that the writ petitioner retired as Lab in-charge. The first question that arises is as to what is the authority of the auditor appointed by the State Government. He is neither a statutory authority under the University Act nor under any other act for the time being. As referred to above report is merely recommendatory in nature to the University authority and it does not command the university authority. If contrary to what the university has been giving before giving effect to the auditor report, its first duty itself is to decide the correctness of the auditor report. Auditor by no means is authority superior to the Finance Officer of the University or Registrar of the University or Vice-chancellor of the University. He is not an authority of the university. If the university examines the recommendation of the auditor and finds it wrong, it is open to the university to recheck the same and proceed in the matter. In case, the university agrees that the auditor report which may be detrimental to the teaching employee or non teaching employee, before remuneration payable to a person is reduced or his post is reduced, in any manner he has to be noticed and he must have a chance to show the invalidity of the report. The university would have to consider this matter and then take decision about the correctness of the report. Merely because the auditor has chosen to write any ipse dixit, university authorities who are statutory authorities are not bound by such report. The State Government has also to keep this in mind.

4. In view of the aforesaid, we find that why the auditor refused to take cognizance of the promotion granted to the writ petitioner and its approval granted by the University to the writ petitioner are not at all disclosed. The auditor is not a super natural creature who has all the power to do what it likes. We may also take note of the fact that through the university has filed and given affidavit in the writ proceeding, it never took a stand that the order passed by the Registrar or the Vice-chancellor for that matter the Principal of the Commerce College recognizing the writ petitioner as Lab in charge to be either erroneous, wrong or misconceived. The annexures to the writ petition being orders of the university in this regard were never challenged by the university. Their mere stand was that as the auditor is state appointed, we have to pay accordingly to the writ petitioner being Lab boy and not Lab in charge.

5. In the circumstances aforesaid, we have no option but to reject the auditor's report and direct the university forthwith to make entire payments of the writ petitioner including now his retrial dues treating him to be Lab in-charge and in that pay scale subject to such pay revision as may be available to him. It shall be the responsibility of the Vice Chancellor and the Registrar of the University to ensure that full and final payment is made to the writ petitioner within a period of two months from today. If full and final payments are not made accordingly,

apart from the aforesaid person being liable for contempt as well as would be liable to pay interest to the writ petitioner, appellant before us on the money due and payable @ 8% per annum from the date of money was due and payable.

6. With this direction and observation this appeal is disposed of.