

(2006) 02 PAT CK 0073
In the Patna High Court
Case No : LPA No. 85 of 2006

Patna University and Others	Vs	APPELLANT
Vinay Kumar Kanth and Another		RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 2 PLJR 174

Hon'ble Judges : J.N. Bhatt, C.J.; S.N. Hussain, J

Bench : Division Bench

Advocate : S. Iqbal Ahmad, for the Appellant; Binod Kumar Kanth and Mukul Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Dr. J.N. Bhatt, C.J.—After having heard learned counsel for the parties and considering the grounds stated in the application for condonation of delay, we are satisfied that there was sufficient cause for not filing the appeal within time. The application for condonation of delay shall, therefore, stand allowed and the delay in filing the appeal shall stand condoned. Accordingly, the rule is made absolute. No costs.

2. By this Letters Patent Appeal the challenge is against the order of the learned Single Judge dated 25.10.2005 in C.W.J.C. No. 10787 of 1999, by invocation of the provisions of Clause 10 of the Letters Patent.

3. Let there be a skeleton projection of facts which are relevant and material and which have led the parties to the present Letters Patent Appeal.

4. The appellant is the Patna University, whereas, the respondent has been working as a Reader in the Department of Mathematics in B.N. College in Patna University at Patna. The aforesaid writ petition came to be instituted by the respondent-original petitioner with a prayer that the Patna University should be directed to pay arrears of salary on account of the revised scale of pay for

lecturer with effect from 1.1.1986 to 20.12.1988, as well as, a direction for arrears of salary on account of difference of salary consequential to his promotion to the post of Reader with effect from 20.12.1988 till 12.1.1999. Since the original petitioner failed in his oral, as well as, written representation before the University, he had now knocked the doors of justice by filing the writ petition under Article 226 of the Constitution of India.

5. The appellant Patna University has, inter alia, raised the contention that the promotion of the original petitioner as a Reader and subsequent fixity of the salary in the scale of Reader and revision of his salary as a lecturer by a notification in the year 1993 has not been disputed. However, it contended that the arrears of salary of the original petitioner has been paid as it was found due and payable by an order, dated 10.1.2005. In short, it appears that the salary of the teachers has been revised in the new U.G.C. scale with effect from 1.1.1996 and the State has released the amount for payment of salary for new U.G.C. scale with effect from January, 2002 and accordingly, the same has been paid to the original petitioner. It is not certain as to whether the amount paid was inclusive of all the arrears of salary in revised scale of a lecturer and resultant or consequential monetary benefits upon earning the promotion as a Reader. Later on, it is noticed that there was a reduction in the scale of the petitioner from Rs. 3700-5700/- to Rs. 3000-5200/- and that too with retrospective effect.

6. The learned Single Judge, upon consideration of the facts and circumstances, reached to the conclusion that the University cannot reduce the scale or salary to which the original petitioner was entitled to. Therefore, the basis on which the reduction was sought to be introduced is not upheld.

7. Upon correct assessment of facts and the relevant provisions of service jurisprudence it is, rightly, held by the learned Single Judge that the appellant University cannot reduce the scale of the original petitioner from entitled scale of Rs. 3700-5700/- to 3000-5200/- and that too with retrospective effect which has already been paid to the petitioner as salary for the post of a Reader with effect from 20.12.1988 vide subsequent notification dated 13.1.1999.

8. The facts and circumstances justify the finding of the learned Single Judge that the original petitioner, respondent in this appeal, is entitled for the payment of arrears of salary on account of revised scale for a lecturer with effect from 1.1.1986 to 20.1.1988 and the arrears consequential to the petitioner's promotion to the post of Reader with effect from 20.12.1988 to 31.12.1999 with applicable Dearness Allowance, as well as, increments is, also, available.

9. It is, also, noticed that the learned Single Judge has directed that the amounts which are deductible for the purpose of Provident Fund Account should be deposited in that Account of the petitioner and the rest of the amounts should be paid after due consideration and calculation. It is further directed that the said amount which is ultimately found due and payable by the Patna University to the original petitioner should be paid within a period of four weeks from the date of

communication of this order or writ with interest on unpaid amount.

10. Upon our evaluation, assessment and consideration of the factual profile, while viewed in the light of the relevant provisions and principles of service jurisprudence, we are in agreement with the ultimate view recorded in the impugned judgment and the conclusion arrived at in the impugned order. We, therefore, find that this Letters Patent Appeal is far from the substance and without any merits.

11. Accordingly, this Letters Patent Appeal shall stand dismissed. Before parting, let there be a caution. It is submitted before us that the due and payable amounts to the petitioner which he could have been paid and enjoyed almost one and a half decade before have remained unpaid thus far. Therefore, we direct the appellant Patna University to calculate in terms of the direction and observations made by the learned Single Judge and confirmed by us, with interest within a period of four weeks from today, failing, which the rate of interest shall be 12 per cent per annum till the date of payment.