(2020) 01 PAT CK 0208

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 24571 Of 2018

Prof. Dhaneshwar Prasad Singh APPELLANT

Vs

State Of Bihar And Ors RESPONDENT

Date of Decision : 13-01-2020

Acts Referred:

Citation : (2020) 01 PAT CK 0208

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Shashi Bhushan Singh, Subhash Chandra Mishra, Archana Palkar Khopde

Final Decision : Disposed Of

Judgement

1. Consequent upon 7th Pay Revision implemented for teaching employees and officers of the Universities by the Government of India through letters No. 1-7/2015-U.II(1) and 1-7/2015-U.II(2) dated 02.11.2017, the Education Department of the Government of Bihar has come out with a resolution issued vide Memo No. 591 dated 06.03.2019, whereby the revised pay structure has been implemented for the teaching and non-teaching employees of the Universities of Bihar with effect from 01.01.2016.

2. Through another resolution issued vide Memo No. 592 of the same date i.e. 06.03.2019, corresponding pension/ family pension of the teaching and non-teaching staff of the Universities have been revised. The said two documents have been brought on record by way of Annexures 13 and 14 to the supplementary affidavit filed on behalf of the petitioner.

3. Petitioner retired on 31.07.2018 as a Professor of Geography, P.G. Department, Lalit Narayan Mithila University, Darbhanga (hereinafter referred to as 'the University'). According to him, he is entitled to payment of following dues against various heads which have remained pending :-

"(i) Rest 10% of pension arrear from August 2018 till the date of payment.

(ii) Payment of rest amount of Gratuity at par with State Govt. Employees which has been notified vide resolution of the Finance Department, Govt. of Bihar contained in Memo No. 22/17 dated 23.05.2017 by which upper limit is Rs.20,00,000/-, though 10 lakh has been paid.

(iii) Sanction of earn leave of 300 days as per leave account, though as per leave account total earn leave 378 days.

(iv) Amount of Group Insurance @ 12.5% compound interest till the date of payment like other employees in view of judgment reported in 2006 Vol-IV PLJR page 369.

(v) Amount of D.D.A. @ 9% compound interest till the date of payment like other employees in view of judgment reported in 2006 Vol-IV PLJR page 369.

(vi) Amount of D.A. and H.R.A. Rs. 5,30,000/- on revised pay point for the period of 01.01.2006 to 31.03.2010.

(vii) Any other admissible dues."

4. In one of the counter affidavits filed on behalf of the University, it has been stated that the amount equivalent to unutilised earned leave has been paid to the petitioner and his full pension @ Rs. 38,500=00 + applicable Dearness Allowance has also been paid. It has been stated in paragraph 6 of the counter affidavit that payment of gratuity up to the upper limit of Rs. 20 lakhs has yet not been implemented in the University and what the petitioner has been found entitled to against said head of gratuity, has been paid.

5. In a supplementary counter affidavit filed on behalf of the University, it has been stated that a decision has been taken by the Syndicate to allow interest @ 8% on G.I.C. with retrospective effect. It has further been stated that D.D.A. has also been paid to the petitioner on 07.01.2020, which has been deposited in his account through RTGS transfer.

6. It cannot be disputed, however, that the fixation of the petitioner's post retiral dues is on the basis of unrevised scale. As has been noticed, the State Government of Bihar has already taken a decision to implement revision of pay and other allowances including pension and family pension for the teaching and non-teaching employees of the State of Bihar. The petitioner, in Court's opinion, is legally entitled to consequential benefits arising out of implementation of 7th Pay Revision of the Central Government. This Court, accordingly, directs the University to redetermine the petitioner's entitlements against various heads on the basis of revised pay-scale, as implemented by the State Government. It is clear from Annexure-14 of the supplementary affidavit filed on behalf of the petitioner that the maximum amount of gratuity on the basis of revised pay has been enhanced to Rs. 20 lakhs with effect from 01.04.2017. Needless to say that the University shall be required to redetermine the amount of gratuity also, accordingly.

7. Mr. Shashi Bhushan Singh, learned counsel appearing on behalf of the petitioner has heavily relied on a coordinate Bench decision of this Court in case of Professor Surendra Bahadur vs. The State of Bihar reported in 2006(4) PLJR 369 to contend that the petitioner is entitled for compound interest @ 12.5% on the amount of Group Insurance. The said decision, in my view, is not at all applicable to the petitioner's case, who retired from Lalit Narayan Mithila University, Darbhanga. In case of Professor Surendra Bahadur (supra) the Court had noticed the decision of Baba Saheb Bhim Rao Ambedkar, Bihar University for introduction of Group Insurance Scheme in which it was proposed that the contributions by the employees to the Scheme would carry compound interest @ 12.5% per annum. It was the case of the University before this Court in case of Professor Surendra Bahadur (supra) that since the said decision of the University was not approved by the State Government, which was subject to approval of the State Government and, in fact, the State Government did not grant approval, the Scheme was abandoned.

However, the employees continued to contribute in the said fund.

It was in that background, the Court held in paragraph 12 as follows :-

"12. The last but not the least, is the controversy on account of Group Insurance. It appears that Baba Saheb Bhim Rao Ambedkar Bihar University on 3rd March, 1986 proposed to introduce Group Insurance Scheme with effect from 1st January, 1986 provided 75% of the employees participate in the said scheme. In the scheme it was proposed that the contributions by the employees to the scheme will carry compound interest at twelve and half per cent per annum. Although the scheme does not say so, but it was contended before me by the learned counsel for the said University, that the Senate of the said University proposed the said scheme subject to the approval by the State Government but the State Government did not give approval thereto. The learned counsel for the State has made it absolutely clear that the said scheme had never been accepted by the State Government. If the said scheme was subject to the approval by the State Government and the State Government had not granted approval thereto, the scheme should have been abandoned immediately. Instead the University encouraged the employees of the Universities and constituent Colleges to participate in the said scheme. As a result cent per cent of the employees of the Universities and constituent Colleges participated in the said scheme. Scheme continued to remain in vogue and still is in vogue. In terms of the scheme amounts lying to the credit of an employee is to be paid together with compound interest at the rate of twelve and half per cent per annum upon his retirement. However, as and when employees of the Universities or constituent Colleges retired they were paid their contributions in the said scheme together with simple interest at the rate of ten per cent per annum. I wanted to know from the learned counsel for Baba Saheb Bhim Rao Ambedkar Bihar University as to when a decision was taken to alter the rate of interest than what had been specified in black and white in the scheme dated 3rd March, 1986 and for that matter adjourned the hearing of these matters from time to time. The learned counsel, ultimately, confessed that there is no such decision recorded in any of the proceedings of the University. The question therefore, is how then the University is proposing to pay ten per cent simple interest? Having regard to the fact that State Government has not undertaken any responsibility pertaining to Group Insurance Scheme, the said University cannot approach the State Government to obtain any assistance in that regard. Therefore, the logical conclusion would be that the said University is paying ten per cent simple interest from its own resources. That suggests that apart from the grant received by the Universities from the State Government, the said University has other resources. If these monies had been kept in recurring deposits or in fixed deposits, probably they could earn more interest than ten per cent simple per annum. There is nothing on the record which would show how the said University invested or is investing these monies and what amount of money was or is being earned on such investments.

The University held out to the employees that the deposits that would be made by them would earn twelve and half per cent interest per annum at compound rate and thereby induced the employees to contribute, which remained with the University. How the University thereupon can contend that it would refund those monies with simple interest at the rate of ten per cent, and that too when there is no decision by the University to reduce the interest rate from twelve and half per cent compound? In those circumstances, until and unless the University re-decides the rate of interest payable on Group Insurance, the employees by reason of the promise made by the University have become entitled to twelve and half per cent interest at compound rate on the deposits they have made under the said scheme."

8. Nowhere it has been pleaded that there was any such decision taken by the University, as was taken in case of Baba Saheb Bhim Rao Ambedkar, Bihar University. The said decision in case of Professor Surendra Bahadur (supra) shall, therefore, have no application to accept the petitioner's claim for compound interest @ 12.5 % over the GIC amount.

9. In the facts and circumstances noted above, this application is disposed of with a direction to the University to redetermine the petitioner's entitlements against all necessary heads, consequent upon implementation of 7th Pay Revision, as noted above. Such determination and computation of the entitlements payable to the petitioner must be done within one month from the date of receipt/ production of a copy of this order. Within two months thereafter, the respondent University shall ensure that the admissible dues against all such heads are paid to the petitioner. The University, in Court's opinion, has no other option but to implement the decision of the State Government for implementation of 7th Pay Revision, taken in the resolutions dated 06.03.2019(supra).

10. It goes without saying that it will be obligatory on the part of the State of

Bihar to release necessary fund in favour of the University for effective implementation of the above-noted resolutions dated 06.03.2019. It is made clear that, in no case, the amount, which the petitioner is found to be legally entitled to, should be withheld on the ground of paucity of fund with the University, because of failure on the part of the State of Bihar, in this regard.

11. It will be open for the University to requisition fund from the State Government for implementation of the present order, if situation so warrants. It will be obligatory on the part of the State of Bihar to release necessary funds in favour of the University for effective implementation of its own resolutions dated 06.03.2019.

