
(2008) 07 PAT CK 0009
In the Patna High Court
Case No : LPA No. 434 of 2008

Prof. (Dr.) Ram Dinesh Sharma

APPELLANT

Vs

The T.M. Bhagalpur University and Others

RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Bihar State Universities Act, 1976 — Section 35

Citation : (2008) 4 PLJR 33

Hon'ble Judges : R.M. Lodha, C.J.; Kishore K. Mandal, J

Bench : Division Bench

Advocate : Purushottam Kumar Jha, for the Appellant; Anil Singh for Respondent Nos. 1 to 4 and 8 and JC to AG-II for Respondent Nos. 5 to 7, for the Respondent

Judgement

1. The appellant is the original writ petitioner. Upon attaining the age of superannuation he retired from the service of Tilka Manjhi Bhagalpur University on 31st January, 2004. At the time of retirement, he was working on the post of University Professor and the Head of Post Graduate Department of Economics and the Dean Social Science of the University. The petitioner approached this Court for diverse reliefs inter alia for a direction to the T.M. Bhagalpur University and its authorities to pay him post retiral benefits and other admissible dues and also for a direction to them to merge 50% of the Dearness Relief in the basic pension of the petitioner from 1st January, 2005.

2. The single Judge after hearing the parties directed the University-authorities to pay unpaid retiral benefits and other admissible dues vide his order dated 18th March, 2008. To that extent, the appellant has no grievance. The grievance in this appeal is confined to non-merger of 50% of the Dearness Relief in the basic pension of the petitioner from 1st January, 2005.

3. At this stage itself, we may refer to Section 35 of the Bihar Universities Act, 1976, upon which reliance is placed by the counsel for T.M. Bhagalpur University, Section 35 reads thus:-

35. No post for appointment shall be created without the prior sanction of the State Government-Notwithstanding anything contained in this Act, no University or any College affiliated to such a University, except such College-

(a) as is established, maintained or governed by the State Government; or

(b) as is established by a religious or linguistic minority;

[(i) After the commencement of this Act no teaching or non-teaching post involving financial liabilities shall be created without the prior approval of the State Government:

(ii) shall either increase the pay or allowance attached to any post, or sanction any new allowance;

Provided that the State Government may, by an order, revise the pay scale attached to such post or sanction any new allowance.

(iii) shall sanction any special pay or allowance or other remuneration of any kind including ex-gratia payment or any other benefit having financial implication to any person holding a teaching or non-teaching post;

(iv) shall incur expenditure of any kind on any development scheme without the prior approval of the State Government.

(2) Notwithstanding anything contained in this Act, no College other than one mentioned in clauses (a) and (b) of sub-section (1), shall, after the commencement of this Act, appoint any person on any post without the prior approval of the State Government:

Provided that the approval of the State Government shall not be necessary for filling up a sanctioned post of a teacher for a period not exceeding six months, by a candidate possessing the prescribed qualification.

[(3) Any appointment or promotion made contrary to the provisions of this Act, or Statutes, Rules or Regulations made thereunder or made in irregular or unauthorized manner shall be invalid and shall be terminated at any time. The expenditure incurred by the University against such appointment or promotion shall be realized from the officer making such appointment or promotion as a public demand under the provisions of the Public Demands Recovery Act, 1914].

4. On the other hand the counsel for the appellant heavily relied upon the Statute-16 of the Statutes which reads thus:-

16. An employee eligible for pension under any of the categories mentioned above, shall be granted pension according to the scales given in Schedule "A" (i) if he ceased to be in University service between 1.4.72 and 31.12.72 and Schedule A(ii) if he ceased to be in University service between 1.1.73 and 30.3.79. For those who ceased to be in University service from 31.3.79 onwards, the scales given in Schedule A(iii) will be applicable. Any further change in the rate of pension as also relief in pension under the Bihar (Govt.) Pension Rules,

will be equally applicable to the University employees.

(emphasis supplied)

5. The counsel for the appellant also relied upon a Circular issued by the Government of Bihar dated 11th April, 2005, whereby the State Government took decision to merge 50% Dearness Relief in the basic pension of the Bihar Government pensioners with effect from 1st January, 2005. Paragraph 7 thereof reads thus:-

7. Dinank 1.1.2005 se moujooda mool pension ka 50 (Pachas) pratisat ke barabar mahangai rahat ka vilay mool pension mein karne sambandhi nirnaya ke phalaswaroop iska labh prapt karne wale pension dhariyon ko dinank 1.1.2005 ke prabhaw se mool pension and mahangai pension ka 14 (choudah) pratisat hin mahangai rahat deya hoga.

6. The question that falls for our determination is: whether the decision taken by the State Government on 11th April, 2005 with regard to the merger of 50% Dearness Relief in the basic pension of the Government pensioners, by virtue of Statute-16 of the Statutes, the appellant becomes entitled to the merger of 50% Dearness Relief with basic pension with effect from 1st January, 2005 or not?

7. Statute-16 of the Statutes inter alia provides that any further change in the rate of pension as also relief in the pension under the Bihar Government Pension Rules will be equally applicable to the University employees. This means and without any doubt that the change with regard to rate or relief of pension to the State Government pensioners automatically applies to the University pensioners in the State of Bihar. In other words, the decision taken by the State Government on 1.1th April, 2005 for merger of 50% Dearness Relief in the basic pension of the State Government pensioners with effect from 1st January, 2005 becomes applicable to the University pensioners as well and no separate order by the State Government generally or specifically for that purpose is required.

8. The stand of the State Government in the counter affidavit that it has not taken any decision with regard to the merger of 50% Dearness Relief in the basic pension with regard to the University employees ignores and overlooks Statute-16 of the Statutes.

9. In so far as Section 35 of the Act of 1976 is concerned, it has no application at all. This provision basically is to the effect that no post for appointment shall be created without prior sanction of the State Government nor the pay or allowance attached to any post, or sanction shall be increased without prior approval of the State Government. Section 35 is not even remotely applicable to the controversy in hand.

10. A conjoint reading of Statute-16 of the Statutes and the Government Circular dated 11th April, 2005 leads to irresistible conclusion that the retired University employees with effect from 1st of January, 2005 are entitled to merger of 50% Dearness Relief in their basic pension. We, accordingly, dispose of the appeal by

the following order:-

(i) The appellant is entitled to merger of 50% of Dearness Relief in his basic pension with effect from 1st January, 2005.

(ii) The respondent nos. 1 to 4 are directed to compute the petitioner's pension with effect from 1st January, 2005 accordingly and pay him arrears of pension within six weeks from the date of receipt of the copy of this order and continue to pay him pension in future accordingly.