(2006) 09 PAT CK 0107

In the Patna High Court

Case No : M.J.C. No. 153/06

Prof. Surendra Bahadur Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 15-09-2006

Acts Referred:

Citation : (2006) 4 PLJR 369

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Jainandan Singh and Harendra Kr. Tiwary, Mahesh Narayan Parbat with M/s Gupteshwar Prasad, Ved Prakash Srivastava, Sanjay Kumar Jha in all except 11845, 13978, 12318, 3854 with M/s Nagendra Rai, Sunil Kumar in 11845 with Mr. Shashi Shekhar Tiwari in 13978, Mr. Naimul Hoda in 12318 and Mr. Gayanand Roy in 3854, S. Iqbal Ahmad, Shivendra Kishore and Ajay, Yugal Kishore and Jai Shankar Barnwal, for the Appellant; Bindhyachal Singh and Ahsanuddin Amanulla, for the Respondent

Judgement

Barin Ghosh, J.—The contempt applications and the writ petitions raise points for consideration which are almost identical and, accordingly, it was decided that the same should be heard together. One of the contentions is how much leave an employee working in the University or in a constituent College is entitled to encash upon his retirement. It appears that originally 180 days leave could be encashed. The same was subsequently enhanced to 240 days leave by reason of a decision of the Government dated 25.12.1986. Thereafter, the same was increased to 300 days by yet another Notification dated 30th July, 2005 issued by the Government. In relation to the last Notification a writ petition is pending and, accordingly, I have decided not to go into that aspect of the matter.

2. In terms of the provisions of the Bihar State Universities Act, 1976 the responsibility to pay the salaries, allowances and perquisities accepted by the State Government to be paid to the employees of the Universities and constituents Colleges vests in the State Government. The Universities are obliged to satisfy the State that on account of such accepted salaries, allowances and

perquisities the Universities have incurred a certain liability towards, the employees of the Universities and the constituent Colleges and on being satisfied, it is the obligation of the State to make available to the Universities the money required to meet such liabilities and from such money provided by the State the said liability is to be met. Having regard to the fact that the State Government itself has accepted that an employee of the Universities or of constituent Colleges is entitled to encash 240 days leave. I declare that such employees are entitled to the same provided they have to their credit such encashable leave. This pronouncement is subject to the further decision to be rendered by this Court in the pending writ petition pertaining to encashability of 300 days leave.

3. One of the other contentions in these matters is pertaining to enhanced gratuity. This court has rendered a judgment in relation thereto which has been accepted by the State Government, Universities and the employees of Universities and of the constituent Colleges and, accordingly, the State Government has issued appropriate Notification in that regard and as such there is no necessity for making a further pronouncement in that regard. It is hoped and expected that the State Government as well as the Universities shall make an earnest endeavour to pay such agreed gratuity to the employees of the Universities and constituent Colleges upon determining their eligibility to get the same.

4. Another controversy in the instant case was in relation to deferred dearness allowance. It appears that dearness allowance payable by the Government to its own employees was revised on 21st April, 1977. On 14th October, 1977 the Government issued a Notification and thus applied such revision at the same rate also to the employees of the Universities and constituent Colleges with effect from 1st March. 1979. It was held out that up to a sum of Rs. 96/- payable by reason of such revision will be paid to the employees concerned. In addition thereto, it was decided that fifty per cent of anything payable to the employee concerned over and above Rs. 96/- shall also be paid. It was decided that the remaining fifty per cent will be deposited in the general Provident Fund account of the employees. It is surprising that none of the employees of the constituent Colleges of the State has a Provident Fund Account. The practice adopted by the Universities and the Constituent Colleges is to open Savings Bank Accounts in the individual names of the employees in a nearby nationalized Bank and the minimum contribution required to be made by an employee in terms of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 is deposited in such accounts after deducting the same from the salary payable to the employees. I am told initially such deposits used to be made in similar accounts opened in a local post office in the name of the employees concerned and later on those were closed and proceeds thereof were transferred to Saving Bank Accounts opened in the Banks. I am also told that the employees who joined after the practice of maintaining savings Bank Accounts in Banks had been adopted, their proportionate contribution towards Provident Fund is deposited in

the similar manner in the Savings bank accounts of such employees. It is even more surprising that the said practice is still in vogue.

5. The learned counsel for the J.P. University has drawn my attention to the Statute for grant of retirement benefits to employees of the Bihar/Ranchi/ Bhagalpur/ Magadh/L.N. Mithila and K.S.D. Sanskrit Universities, as was approved by the Chancellor on 18th November, 1980. The said Statute provides for crediting of interest in the accounts of provident fund holders by the scheduled Banks concerned. Having regard to the fact that the Central Government has not yet, by a Notification published in the official gazette, has brought any Universities or constituent Colleges employing twenty or more persons within the ambit of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, strictly speaking the said Act has no application in relation to Universities and constituent Colleges. However, the fact remains that general Provident Fund, as applicable to the Government Employees, earns at present interest at the rate of 8% per annum with six monthly rest whereas Savings Bank Accounts in any nationalised Bank does not earn interest even close to what general Provident Fund account earns. When the Government has undertaken the burden of paying the salaries, emoluments and even retiral benefits to the employees of the Universities and constituent Colleges, it is high time for the Government to consider this aspect of the matter.

6. However, fifty per cent of the revised dearness allowance which was required to be deposited in the Provident Fund account of the employees maintained with the Banks, was, in fact, not deposited. It appears that on 25th of April, 1986 a decision was taken to pay 8% compound interest on such difference from the date the same was required to be deposited in the Provident Fund Account until payment. By a subsequent decision dated 17th December, 1986 the interest rate was enhanced from 8% to 9%. The Universities, however, are proposing to pay interest on such difference at the compound rate of 8% from the date such deposit were required to be made in the accounts of the employees up to 18th December, 1986 and no interest thereafter. That appears to be the real controversy in the instant cases.

7. Having regard to the fact that the Universities proposed to pay 9% compound interest, at least up to 17th December, 1986, there cannot be any dispute that they are liable to pay the same. In as much as such difference was to be deposited in the Savings Bank Accounts of the employees, which were their Provident Fund accounts, and the same having not been deposited, the employees are entitled to interest on such difference of dearness allowance from 18th December, 1986 at the rate Nationalized Banks used to pay interest on Savings Bank Accounts until the payment thereof. It is, therefore, declared that the employees are entitled to compound interest at the rate of 9% per annum with effect from the date such difference was to be deposited until 17th December, 1986 and thereupon at Nationalised Bank Savings Account interest rates varying from time to time from 18th December, 1986 until payment.

8. The next contention in these matters is with regard to dearness allowance. On 7th August, 1989 the State Government implemented University Grant Commission scale with effect from 1st January, 1986, but financial benefits in relation thereto were to be given on and from 1st August, 1989. There is no dispute that the benefit of the said scale having been introduced was given to the employees of the Universities and constituent Colleges. These scales carried dearness allowance at the rate(s) to be announced by the State Government from time to time. While the State Government announced such rate(s) of dearness allowance and paid the same to its own employees, the previous rate of such dearness allowance continued to be (paid ?) to the employees of the Universities and constituent Colleges. When the State Government upwardly revised the rate of dearness allowance and implemented the same for its own employees, the previous rate at which the State Government employees were getting dearance allowance was given to the employees of the Universities and the constituent Colleges. The State Government has not brought on the record anything to justify the above action. There appears to be no conscious decision of the State Government to give lower dearness allowance to the employees of the Universities and constituent Colleges than its own employees for any period.

9. In those circumstances, it is declared that whenever and with effect from which ever date the State Government revised the rate of dearness allowance and made the same available to its own employees, the employees of the Universities and constituent Colleges also became entitled to the same. Let the amount due on that account and not paid be released and paid to the employees of the Universities and the constituent Colleges as quickly as possible but not later than four months from today.

10. There is a contention in these proceedings as regards non-settlement and payment of commutation money. Statute governing the field admittedly authorises payment of the same subject to availability of funds and upon fulfilment of certain conditions as mentioned in the Statute. None of the employees of Universities and constituent Colleges has, however, been accorded any commutation money, despite many of them having tried to establish that they fulfill the conditions for obtaining the same as laid down in the Statute only on the ground that the Universities have no funds. Even their applications for that purpose, in many cases, had not been accepted. In as much as in terms of the law governing the field the Universities have to justify before the State their requirement in order to obtain funds from the Government for meeting such requirement, it is obligatory on the part of the Universities to approach the Government when any of the employees of the University or constituent College applies for commutation and fulfils the criteria laid down in the Statute, for the purpose of obtaining funds to meet such claim and it is also obligatory on the part of the State to provide such fund to the Universities unless the claimant of such commutation is not entitled to the same in terms of the provisions contained in the Statute. The availability of fund, as provided in the Statute, has lost its meaning altogether for it is now the State Government which is required

to meet all approved expenses of the Universities. In those circumstances, the Universities are directed to process all such applications and if they are of the view that all or any of them is entitled to make a claim for commutation to approach the State for release of appropriate fund and the State is also directed to release appropriate fund if it is satisfied that the claimant is entitled to the same within the four corners of the eligibility as prescribed in the Statute but not on the ground of non-availability of fund. This exercise must be completed within a period of six months from today in respect of those employees who have already retired. In future the exercise must be completed within three months from the date of retirement of the employee concerned.

11. 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.

12. Let the same be calculated and paid to the employees within a period of six months from today.

13. Originally by and under the Bihar State Universities Act, 1976 Baba Saheb Bhim Rao Ambedkar Bihar University was established which had jurisdiction over Tirhut Division as well as Saran Division. In 1990 the Bihar State Universities Act, 1976 was amended and thereby Baba Saheb Bhim Rao Ambedkar Bihar University was re-established having its jurisdiction only over Trihut Division and at the same time Jai Prakash University was established having jurisdiction over Saran Division. The constituent Colleges situate within Saran Division then came under Jai Prakash University. The service records, contributions in Banks, on account of Provident Fund, as well as Group Insurance money and other sums, as discussed above of the employees of those Colleges, then working as were lying with Baba Saheb Bhim Rao Ambedkar Bihar University, were transferred to Jai Prakash University. Those employees, after their retirement obtained their dues on account of retirement from Jai Prakash University. The service book of those employees are also lying with Jai Prakash University. In those circumstances, in relation to those employees, Jai Prakash University is directed to calculate the dues of those employees for the period prior to establishment of Jai Prakash University and submit such claims with Baba Saheb Bhim Rao Ambedkar Bihar University who shall thereupon collect the appropriate grant in respect thereof from the State Government and remit back the same to Jai Prakash University who shall thereupon pay the same as well as the money payable by them on account of the dues as discussed above to the persons entitled to the same. For this purpose I have allowed six months'' time to pay the aforesaid dues and claims of the employees.

14. In relation to Group Insurance it appears that Jai Prakash University, after its

establishment did not take any decision. It, however, collected contributions towards the said scheme. The Statute provides that Jai Prakash University shall be entitled to take any decision of its own pertaining to its employees but until such time such a decision is taken the decision taken in relation thereto by Baba Saheb Bhim Rao Ambedkar Bihar University shall hold the fort. In those circumstances, Jai Prakash University having not taken any independent decision pertaining to Group Insurance and having collected contributions on account of Group Insurance on the strength of the decision taken by the Baba Saheb Bhim Rao Ambedkar Bihar University is bound by the pronouncement as above until such time it decides to alter the rate of interest.

15. This disposes of all these matters. It is made clear that I have not gone into individual disputes and claims put forward in these matters and if those are not covered by the pronouncement as above it shall be open to the applicants/ petitioners to take such recourse to law as he/they may be advised.

16. It appears that the Universities have not taken applications for commutation from the employees who have already retired on account of paucity of funds. The Universities are directed to accept those applications and to do the needful, as above.

17. In the event factual matters, as indicated above, are similar in relation to Magadh University and Patna University, the aforementioned pronouncement shall also apply to them.

18. One of the controversies before me was payment of pension and other retiral dues on account of revision of pay. During the course of argument it was agreed that every effort shall be made to release the same at an early date. In such view of the matter, no specific direction is being issued, but the Universities are requested to ensure compliance of what they have expressed to court at an early date, preferably within a period of six months. Let a copy of this order be handed over to the learned counsel for the petitioners.

