

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3712 of 2012

=====

1. Braj Mohan Sharma S/O Late Pannalal Sharma Resident Of Rahimpur
Kothi, Gandhi Nagar, Khargaria, P.S. + District-Khargaria

.... Petitioner

Versus

1. The T.M. Bhagalpur University, Bhagalpur through its Registrar
2. The Vice-Chancellor, T.M. Bhagalpur University, Bhagalpur
3. The Financial Advisor, T.M. Bhagalpur University, Bhagalpur
4. The Registrar, T.M. Bhagalpur University, Bhagalpur
5. The Finance Officer, T.M. Bhagalpur University, Bhagalpur
6. The Principal, Mahila College Khargaria, District-Khargaria
7. The State Of Bihar through the Principal Secretary, Human Resources
Development Department, Government Of Bihar, New Secretariat, Patna
8. The Director, Department Of Higher Education, Govt. Of Bihar, Patna
9. The In-Charge, State Govt'S Auditors Team deputed at T.M. Bhagalpur
University, Bhagalpur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : M/s. Purushottam Kumar Jha and Sandhya
Mishra


For the University : Mr. Ashok Keshri.

=====


**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD
SINGH**

ORAL ORDER

5 22-03-2013 A counter affidavit has been filed on behalf of Tilka
Manjhi Bhagalpur University. Learned counsel for the petitioner
states that he does not wish to file rejoinder thereto. The petitioner
claims that he is one of the founder teacher of Mahila
Mahavidyalaya, Khargaria, which was established in 1973. It was
immediately granted affiliation. On 2.4.1975, the petitioner as a
founder member, was appointed as the first Lecturer in the
department of Hindi in the said college. On 23.1.1987, this college
was made a constituent college that is known as 4th phase



constituent college. A lot of disputes arose with regard to teachers in these colleges. A large number of belated appointments were made on unsanctioned posts in anticipation of the colleges becoming constituent colleges. The matter having travelled to the Apex Court. The Apex Court set up Mr. Justice (retired) S.C.Agrawal Commission, who enquired these matters and submitted a report with regard to the colleges and its teachers pointing out as to from when the teachers were appointed and were eligible for such appointment. This exercise ended in detailed report by the said Commission. The relevant pages whereof are Annexures 2 and 3 to this writ petition. If one refers to the report of the Agrawal Commission, it would be found that it clearly gave a finding that so far as the petitioner is concerned, he was appointed on 2.4.1975 and was eligible as such from 2.4.1975 itself. From the list of Lecturers in Hindi, it would be evident that he was appointed minimum five years prior to any other appointment in this section. It may also be noted here that when Agrawal Commission decided the eligibility date, it has taken into consideration the sanctioned/deemed sanctioned post and only where this was found valid the eligibility was fixed with reference to the said date. The petitioner, thus, claims that his services in the college, which, as stated, was taken over as a constituent college,




on 23.1.1987 had to be counted from 2.4.1975. After this report was submitted to the Apex Court, the Apex Court accepted the report and disposed of the matter in view of the report. Thus, the report upon its acceptance and disposal of the appeal before the Apex Court became a part of the judgment of the Apex Court. It appears that thereafter the University issued necessary follow of notification, which could not have been in any manner different from the judgment of the Apex Court or for that matter the report of the Agrawal Commission. Notwithstanding the aforesaid when the petitioner superannuated on 28.2.1993, the University has chosen to reject his claim for retiral dues, including pension on the ground as stated in para 6 of the counter affidavit, which is quoted hereunder:

“That the petitioner was in the category of RI and belonged after cut off date i.e.30.04.1986.”

Learned counsel for the petitioner submits that this statement is a palpably false and misleading statement. It is the correctness of this stand, that is, in question because the relief, as claimed by the petitioner, would be dependent upon this.

Having heard the parties, I am of the view that the statement as made in para 6 of the counter affidavit cannot be accepted even for a moment. As noticed above, the report of



Agrawal Commission became a part of the judgment of the Apex Court. The relevant pages of Agrawal Commission, which have not been doubted in the counter affidavit nor any contrary document has been annexed in the counter affidavit for the bald statement made in para 6. It is clear that the petitioner had been appointed as a Lecturer on 2.4.1975 and Agrawal Commission had found him eligible for absorption stating that the date of eligibility is 2.4.1975 itself. In view of this it does not lie in the mouth of the University to change its stand in any manner.

I may also refer to the judgment of this Court in the case of Babu Saheb Jha & ors. Vrs. The State of Bihar & ors. being C.W.J.C.No. 3017 of 2006, disposed of on 3.11.2010. Reference whereof has been made in para 21 of the writ petition as well. In the said case on similar ground this Court held that when the Agrawal Commission had gave a date of eligibility, that date by virtue of the judgment of the Apex Court became final and neither the State nor the University could sit in appeal over that. On the same parity reasonings and on the ground, as mentioned, it is held that the petitioner should have been deemed to have been absorbed with effect from 2.4.1975 and thus having superannuated on 28.2.1993 he had served the college and the University for more than ten years and thus was entitled to all retiral dues

including pension, leave encashment, gratuity, group insurance and GPF.

In that view of the matter, I am left with no option but to allow this writ petition and I direct the Registrar of the University to forthwith calculate all retiral dues including taking into account revision of pay and pension as and when applicable, as aforesaid and ensure its payment to the petitioner within a period of three months from today, failure to ensure full payment would entail cost and compensation at the rate of 12% per annum simple interest till the time it was paid, the responsibility whereof would be on the Registrar of the University.

The writ petition is thus allowed.

(Navaniti Prasad Singh, J)

singh/-