

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2496 of 2021

1. Prof. (Dr.) Chandrawati Kumari W/o Dr. Janardan Jee, Resident of Basundhara, Road NO.10, Rajeev Nagar, P.S. Rajeev Nagar, District-Patna, Retired as University Professor, A.N. College, Patna Under Magadh University, Bodh Gaya.
2. Prof. (Dr.) Yugeshwar Singh S/o Late Raghunandan Singh Resident of Near Axis Bank Flat No. 302, Kamola Niketan, 1/24 Vivekanand Marg, Boring Road, Patna, retired as University Professor, A.N. College, Patna Under Magadh University, Bodh Gaya.
3. Dr. Dharmendra Narayan Singh S/o Prabhu Narayan Singh Resident of -95E, Patliputra Colony Patliputra, Patna, retired as Associate Professor, B.S. College, Danapur, Patna Under Magadh University, Bodh Gaya.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Education Departemnt, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Higher Education Govt. of Bihar, New Secretariate, Patna.
4. The Vice-Chancellor, Magadh University, Bodh Gaya
5. The Registrar, Magadh University, Bodh Gaya.
6. The Finance Officer, Magadh University, Bodh Gaya.
7. The Principal, A.N. College, Patna, District-Patna.
8. The Principal, B.S. College, Danapur, Patna.

... .. Respondents

Appearance :

For the Petitioners : Mr. Shashi Bhushan Singh, Advocate
For the Respondents : Mr. Madhaw Prasad Yadaw, GP-23
For the Magadh University : Md. Faiz Ahmed, Advocate

CORAM: HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

Date : 15-04-2024

Heard Mr. Shashi Bhushan Singh, learned counsel for
the petitioners, Mr. Madhaw Prasad Yadaw, learned counsel for
the respondents and Md. Faiz Ahmed, learned counsel for the



Magadh University.

2. The petitioners, three in number, who retired on 30.06.2015, 30.06.2017 and 30.06.2017 respectively, have filed this writ petition, seeking a direction to the respondent-authorities to make payment of all the retiral dues including arrears of pension by adding one increment in last basic pay salary of the petitioners. The petitioners have also prayed for a direction to make payment of retiral dues such as gratuity, earned leave and arrears of pension in the light of Memo No. 592 dated 06.03.2019, issued by the Special Secretary, Education Department, Govt. of Bihar to the petitioner Nos. 2 and 3 as they have retired on 30.06.2017 and arrears of pension to the petitioner No. 1 from due date.

3. Learned counsel for the petitioners have submitted that though the prayer of petitioners are worded in the manner indicated hereinabove; the basic prayer of the petitioner Nos. 1, 2 and 3 is for payment of pension by adding one increment in the last basic salary of the petitioners and to pay additional gratuity to petitioner Nos. 2 and 3, in the light of notification dated 06.03.2019, issued by the Special Secretary, Education Department, Govt. of Bihar.

4. Learned counsel for the petitioners submit that the



petitioner No. 1 and 2 retired on 30th June, 2015 and 30th June, 2017 respectively from the post of Professor from the Magadh University, while the petitioner No. 3 retired on 30th June 2017 from the post of Associate Professor from the Magadh University. Insofar as payment of pension by adding one increment in last basic salary of the petitioners are concerned, the petitioners by referring to office memorandum dated 30.08.2008, issued by the Joint Secretary to the Government of India, Ministry of Finance (Annexure – 1 to the writ petition), contends that by the said office memorandum, in terms of the CCS (RP) Rules 2008, a uniform date of increment has been provided which is 1st July of every year after implementation of the revised pay structure.

5. Learned counsel for the petitioner, by referring to the decision of the Supreme Court rendered in the case of *The Director (Admn. And HR) KPTCL & Ors. vs. C.P. Mundinamani & Ors.* passed in *Civil appeal No. 2471 of 2023*, dated 11th of April, 2023, further contended that since the petitioners have retired on 30.06.2015 and 30.06.2017 respectively, they are entitled to be paid basic salary and the pension calculated after having adding one increment in the last basic salary of the petitioners.



6. Insofar as the payment of gratuity to the petitioner Nos. 2 and 3 are concerned, it is contended by learned counsel for the petitioners that the petitioner nos. 2 and 3 have so far received ₹10 lakhs each as gratuity. However, by referring to the notification dated 06.03.2019, issued by **the Special Secretary, Education Department, Government of Bihar**, (Annexure – 4 to the writ petition), more particularly, Clause 7(iv) of the same, it is contended that since by the aforesaid notification, ₹20 lacs has been provided as the upper ceiling limit for receiving gratuity for the employees, who have retired after 01.04.2017, the petitioner nos. 2 and 3, who have retired on 30.06.2017, which is after 01.04.2017, are entitled to receive more than ₹10 lacs as gratuity, as provided in the notification dated 06.03.2019.

7. Respondent nos. 2 and 3 and 4 to 6 have filed counter affidavits.

8. Insofar as the payment of one additional increment is concerned, in paragraph 7, 8, 9 and 10 of the counter affidavit filed by the respondent Nos. 2 and 3, it is stated as under:

“7. That it is humbly stated that the issue of grant of one notional increment for the purpose of calculating terminal benefits, when the increment fall due on the next date of retirement, as per the petitioners are not res integra, which is not right for the reason mentioned herein below.



8. That it is humbly stated that recently the Hon'ble High Court of Karnataka, Dharwad Bench vide order dated 22.10.2020 passed in Writ Petition No. 146967 (S-CAT) (Union of India & Anr. Vs. M. Siddaraj) has rejected the writ petition filed by the Union of India after relying on judgments (Annexure-2 and 3 of the present writ application). The said order dated 22.10.2020 is being brought record for the better appreciation of this act.

9. That it is humbly stated that the Union of India has preferred SLP against the aforesaid order dater 22.10.2020 before Hon'ble Supreme Court bearing SLP (C) No. 4722 of 2021 (Union of India & Anr. Vs. M. Siddaraj). The Hon'ble Supreme Court vide order dated 05.04.2021 has stayed the operation of the order dated 22.10.2021 and further directed to retiral dues on the basis of the last pay drawn by him on the date of his retirement, that is, 30.02.201.

10. That it is humbly stated that the issue of grant of one notional increment when an employee retired on next of date entitlement of increment is yet to be settled by the Hon'ble Apex Court and on this issue of aforesaid SLP is pending adjudication, therefore the claim of the petitioner is premature.”

9. Insofar as payment of additional gratuity to petitioner nos. 2 and 3 is concerned, in paragraph 14 of the counter affidavit filed by respondent No. 2 and 3, it has been stated as under:-

“14. That it is stated that Clause-7(iv) of the aforesaid resolution stipulates that the payment of Rs. 20 Lac will be admissible under gratuity with effect from



01.04.2017 whereas all the petitioners have retired prior to that hence they are not entitled for Rs. 20 lac as gratuity amount.”

10. The stand of the University authorities/respondent Nos. 4-6 are as under:

10.1. Insofar as the payment of one additional increment is concerned, in paragraph 10 of the counter affidavit filed by respondent Nos. 4 to 6, it has been stated as under:-

"10. That it is respectfully stated and submitted that the decision with regard to grant of additional 1 increment w.e.f. 1st July of each year is a policy matter to be decided by the state Government, therefore, any decision to grant 1 increment can be taken by the state Government only. The University is bound to follow the directions of the State Government and payments are being made as per the provisions contained in the Statute and the directions given by the State Government."

10.2. Insofar as the payment of additional gratuity to the petitioner nos. 2 and 3 is concerned, in paragraph 11 of the counter affidavit filed by the respondent no. 4 to 6, it has been stated as under:-

"11. That it is further stated and submitted that so far the claim of the petitioner no. 2& 3 with regard to payment of Gratuity to the tune of Rs. 20/-



lakhs are concerned, the University has requested the State Government to make available an additional grant for payment of the differential amount towards Gratuity to those persons who retired in the year 2017 & 2018. Therefore, payment will be made to the petitioner's no. 2 & 3 after release of grant from the State Government in this regard."

11. I have heard the learned counsel appearing for the parties.

12. There is no dispute that the petitioner no. 1 and 2 retired as professors from the Magadh University on 30.06.2015 and 30.06.2017 respectively, and petitioner No. 3 retired as Associate professor on 30.06.2017 from the Magadh University. On perusal of the office memorandum dated 30.08.2008, issued by the Joint Secretary to the Government of India, Ministry of Finance, it appears from clause 2(iii) thereof that in terms of the CCS (RP) Rules 2008, a uniform date of increment from 1st July of every year has been fixed after implementation of the revised pay structure. Consequently, in the case of employees, whose date of next increment falls on 01.01.2006, the increment is provided to be drawn in the pre-revised scale and pay fixed in accordance with the tables after including the increment. The next increment in the revised pay structure in such cases is



provided to be drawn on 1st July, 2006.

13. The question that falls for determination by this Court is whether the petitioners who have retired on 30th June, 2015 and 30th June, 2017 respectively and are no longer in service would be entitled to be paid an increment for the services rendered in the preceding year ?

14. The issue of similar nature came up for consideration in the case from Karnataka in *The Director (Admn. And HR) KPTCL & Ors. vs. C.P. Mundinamani & Ors. Civil appeal No. 2471 of 2023* by the Supreme Court wherein, the question formulated for determination in that case was whether an employee, who has earned the annual increment, is entitled to the same despite the fact that he has retired on the very next day of earning the increment. The question formulated has been answered by the Supreme Court in affirmative. The result of the decision rendered by the Supreme Court in the case referred to hereinabove is that employees who have earned one annual increment on the last day of their services for rendering their services preceding one year from the date of retirement with good behaviour and efficiently are entitled to be granted one annual increment.

15. In the instant case it is noted that since the



petitioners have retired on 30.06.2015 and 30.06.2017 respectively after having served for another full year from the last date of increment, the petitioners would be entitled to be paid an increment for the services rendered after 1st July 2014 and 2016 respectively till 30th June, 2015 and 30th June, 2017 respectively notwithstanding the petitioners have retired in the meanwhile.

16. The only objection by the State in the counter affidavit filed on behalf of the respondent Nos. 2 and 3 is that the issue regarding payment of the increment in such case is subjudice before the Supreme Court in SLPC No. 4722 of 2021 (Union of India and Another Vs. M. Siddaraj).

17. Apart from taking a stand on that issue regarding payment of an increment that such a case is subjudice before the Supreme Court in the case referred to hereinabove, no other objection appears to have been taken by the State-respondents in the counter affidavit filed by the respondents Nos. 2 and 3. The petitioner has filed a supplementary affidavit, wherein the order passed in the aforesaid case of M. Siddaraj (Supra), referred to by the respondent No. 2 and 3 in the counter affidavit, has been brought on record vide Annexure P-9 to the supplementary affidavit, to show that the said SLP has been disposed of by the



Supreme Court vide order dated 19.05.2023 by providing that the issue raised in this appeal is squarely covered by the judgment passed in Civil Appeal No. 2471 of 2023 decided on 11.04.2023 in the case of *The Director (Admn. And HR) KPTCL & Ors. vs. C.P. Muddinamani & Ors.* Thus, the only objection raised by the State in the counter affidavit filed by the respondent Nos. 2 and 3, stating that the issue raised in this writ petition is pending consideration by the Supreme Court, no longer survives and the same has been answered in the said special leave petition by holding that the issue has been decided in the case of *The Director (Admn. And HR) KPTCL & Ors. vs. C.P. Muddinamani & Ors. Civil appeal No. 2471 of 2023* by the Supreme Court.

18. The University authorities through the counter affidavit filed by the respondent Nos. 4 to 6 have not raised any specific objection, except to say that it is a policy matter to be taken by the State Government and the University authorities are bound to follow the decision of the State Government.

19. In view of the above, factual position and the law being settled by the Supreme Court in the case of *Civil appeal No. 2471 of 2023 (The Director (Admn. And HR) KPTCL & Ors. vs. C.P. Muddinamani & Ors.)*, I find that the petitioners,



who have retired on 30.06.2015 and 30.06.2017 respectively, are entitled to be paid an additional increment for the services rendered in the preceding year before their retirement and their pension revised thereafter.

20. Insofar as the payment of additional gratuity to the petitioner Nos. 2 and 3 is concerned, it is noticed that there is a notification dated 06.03.2019 issued by the Special Secretary, Education Department, Govt. of Bihar annexed as Annexure – A in the writ petition. In clause 7(iv) thereof, it has been provided that ₹ 20 lacs shall be the upper ceiling limit of gratuity, insofar as the employees who have retired after 01.04.2017. It is evident from the counter affidavit filed by the respondent nos. 2 and 3 that the additional gratuity has been denied to the petitioner Nos. 2 and 3 by contending that petitioner Nos. 2 and 3 have retired before 01.04.2017 as can be seen from para 14 of the counter affidavit filed by the respondent Nos. 2 and 3, quoted hereinabove.

21. Since, there is no dispute that the petitioner Nos. 2 and 3 have retired on 30.06.2017, the stand taken by the respondent Nos. 2 and 3 in the counter affidavit filed that the upper ceiling limit of ₹ 20 lacs insofar as the gratuity is concerned would not be applicable on the ground that petitioner



Nos. 2 and 3 have retired prior to 01.04.2017, cannot be accepted as justified ground to deny additional gratuity to the petitioner Nos. 2 and 3.

22. The respondent Nos. 4 to 6 (the University authorities) while not denying the entitlement of additional gratuity by the petitioner Nos. 2 and 3 have also stated in the counter affidavit that the University has requested the State Government to make additional grant for payment of differences towards gratuity to those persons who retired in the year 2017 and 2018.

23. Accordingly, since the applicability of notification dated 06.03.2019 insofar as the petitioner Nos. 2 and 3 are concerned, have not been denied by the State-Respondents, I am of the view that the respondent authorities are liable to pay the petitioner Nos. 2 and 3 additional gratuity in terms of the notification dated 06.03.2019.

24. In view of the discussions made hereinabove, this writ petition is hereby disposed of with the following directions:

(i) the respondents are directed to pay an additional one year's increment for the services rendered by the petitioners one year preceding their retirement i.e., 30.06.2015 and 30.06.2017 respectively.



(ii) the respondents are directed to pay the petitioner Nos. 2 and 3 an additional gratuity in terms of notification dated 06.03.2019 issued by the Special Secretary, Education Department, Government of Bihar vide Memo No. 592.

25. The payments directed as above shall be made by the respondent-authorities within a period of 3 months along with admissible interest, if any, from the date of receipt of the certified copy of this order.

26. The writ petition is disposed of with the above directions.

(Nani Tagia, J)

Siddharth
Sagar/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.04.2024
Transmission Date	NA

