

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17619 of 2016

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Krishna Kant Sinha, aged about 82 years, S/o Late Shiv Ram Prasad Sinha, Shyam Nagar Lane - 2 Muzaffarpur, Secretary Pensioner Samaj, BRBA University, Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary Higher Education, Government of Bihar, Patna.
3. The Secretary Finance Government of Bihar, Patna.
4. The Director, Public Instruction, Government of Bihar, Patna.
5. Vice Chancellor, BRBA University, Muzaffarpur.
6. BRA, Bihar University Muzaffarpur through its Registrar.
7. The Financial Advisor BRA, Bihar University, Muzaffarpur.
8. The Finance Officer, BRA, Bihar University, Muzaffarpur.
9. The Auditor Government of Bihar fo BRA, Bihar University, Muzaffarpur.

... ... Respondent/s

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Constitution of India- Art. 226- Grievance of retired employees for not settling their retiral dues at the earliest/not paying pension regularly effecting their rights- any delay on part of employer/state in not settling the retiral dues/ paying pension regularly as and when payable cannot be tolerated. (Para-6)

Employer/state govt. bound to make provisions in advance to settle retiral benefits and pay pension regularly- all formalities must be completed in advance to settle the dues at the time of retirement- retiral benefits to be considered as a right to property. (Para-6.1)

Pension is a statutory right, not a bounty- right of employee to receive pension is property under Art. 31(1) of the Constitution.----- (1983) 1 SCC 305, (2015) 9 SCC 540, (1971) 2 SCC 330, (1988) 3 SCC 32, (2011) 11 SCC 702, (2001) 8 SCC 71, (2013) 12 SCC 210----- relied on.

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Appearance :

For the Petitioner	:	Mr. Anupa Nand Jha, Advocate Mr. Santosh Kumar Singh, Advocate
For the Respondent-State	:	Mr. Amarendra Kumar, AC to AAG-15
For the BRA Bihar University	:	Mr. Rakesh Kumar Singh, Advocate
For the VKS University	:	Mr. Rajesh Prasad Chaudhary, Advocate
For the Magadh University	:	Mr. Shivendra Kishore, Senior Advocate Mr. Ritesh Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-10-2018

1. The petitioner has preferred the present writ petition in the nature of public interest litigation highlighting the difficulties faced by the retired employees of the Universities of the State of Bihar and in not firstly settling the retiral benefits/pensionary benefits at the time of retirement on attaining the age of superannuation and even in a case where the retiral benefits/pensionary benefits are settled, though belatedly,



thereafter, they are not paid the pension every month regularly and many a times they have to wait for number of months.

2. It is the case on behalf of the petitioner that by not settling the retiral benefits/pensionary benefits timely and not making the payment of pension every month regularly, the rights of the retired employees, who live with dignity, as guaranteed under Article 19(1) read with Article 21 of the Constitution have been violated.

2.1. It is the case on behalf of the petitioner that many a times and mostly they are paid the pension belatedly after three to four months and they are not paid the pension regularly on the first day of every calendar month.

3. In response to the notice issued by this Court Sri Rajesh Prasad Choudhary, learned counsel appears on behalf of the respondent Veer Kunwar Singh University; Sri Rakesh Kumar Singh, learned counsel appears on behalf of the B.R.A. Bihar University; and Sri Shivendra Kishore, learned Senior Counsel appears on behalf of the Magadh University and Sri Amarender Kumar, learned counsel appears on behalf of the respondent-State.

3.1. It is the case on behalf of the respective universities that the Universities as such have to depend upon the grant and/or the amount to be released by the State Government



and as and when the State Government releases the fund/grant for payment of retiral benefits/pensionary benefits/pension, the retired employees are paid the same. It is the case on behalf of the respective Universities that most of the time, the State Government does not release the grant/fund to the Universities in time and on month to month basis.

3.2. In the counter affidavit filed on behalf of the respondent Nos.5 to 8- BRA, Bihar University, Muzaffarpur, the University has provided the chart showing the grant received from the State Government and payment made by the University which is as under:-

Grant received from the State Governemnt - Payment made by the Univ.

Letter No.	Date	Months	
1096	30-06-16	March, April, May, 2016	11-07-16
1596	28-10-16	June to September 2016	04-11-16
125	31-01-17	October & November 2016	02-02-17
274	26-02-17	December 16 to February 17	04-03-17
997	15-05-17	March & April 2017	24-05-17
1073	24-05-17	May 2017	05-06-17

3.3. A counter is filed on behalf of the State of Bihar affirmed by the Under-Secretary, Education Department, Bihar, Patna, in which it is stated that each of the Universities send



the estimated budget for a particular financial year to the State Government. Thereafter, the Universities prepare those budgets on the basis of the estimated expenditure likely to be incurred in salary and other allowances to be paid to the validly appointed employees, which include the payment of retirement benefits to those employees who are likely to be retired in that financial year. It is stated that the State Government in pursuance of those estimated budgets, release the fund to each of the Universities which, in turn, utilize the same and send the utilization certificate to the Government. It is stated that many a times, the Universities send a requisition vide an application, though it ought to have sent in a proper format which further causes unnecessary delay in processing the requisition. It is stated that the State Government is regularly releasing the grant-in-aid to the Universities for making the payment of salary as well as retiral benefits to their employees who have been working in legal and valid manner. It is further stated that apart from making regular grant to the Universities, additional grants are also being released by the State Government for meeting expenditure on account of post retiral dues.

4. Having heard learned counsel appearing on behalf of the respective parties and considering the counters/supplementary counters filed on behalf of the State



Government as well as the respective Universities, it appears that both the State Government and the respective Universities are blaming each other. However, the real sufferers are those retired employees, who need the money to maintain themselves and their family members.

4.1. It is required to be noted that from the various orders passed by the Division Bench of this Court in the present proceedings, both the State Government as well as the respective Universities were directed to evolve a concrete policy or system so that the retiral benefits/pensionary benefits of the concerned retired employees are settled at the earliest. However, none of them have come out with a concrete policy. From the material on record it appears that as the State Government is not releasing the amount/grant for payment of pension to be paid every month, the respective pensioners are not getting the pension every month regularly. From the chart produced hereinabove, it is emerging that the respective retired employees are paid the pension for the months of March, April, May, 2016 in the month of July, 2016; from June to September, 2016 on 04.11.2016; for October and November, 2016 on 02.02.2017; for the period between December, 2016 to February, 2017 on 04.03.2017 and so on. Thus, none of the



retired employees have got/received the pension every month regularly and they have to beg.

5. Before issuing final directions, few decisions of the Hon'ble Supreme Court on the right of retired employees are required to be referred to.

5.1. In the case of **D. S. Nakara v. Union of India**, reported in **(1983) 1 SCC 305** in paragraph 18 to 20, the Hon'ble Supreme Court has observed and held as under:-

“18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

*20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in **Deokinandan Prasad v.***



State of Bihar, reported in (1971) 2 SCC 330, wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh, reported in (1976) 2 SCC 1."

5.2. Having taken note of the observations made by the Hon'ble Supreme Court in the case of **D.S. Nakara** (supra), in the case of **State of Rajasthan & Ors. v. Mahendra Nath Sharma**, reported in (2015) 9 SCC 540, the Hon'ble Supreme Court has observed and held that pension is not a bounty. It is further observed that the benefit is conferred upon the employee for his unblemished career. It is further observed that it is the duty of the Government to avoid unwarranted litigation and not to encourage any litigation for the sake of litigation.

5.3. In the case of **Deokinandan Prasad v. State of Bihar**, reported in (1971) 2 SCC 330, it is observed by the Hon'ble Supreme Court that pension is not a bounty payable on



the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant. It is further observed and held that right of the employee to receive pension is a property under Article 31 (1) of the Constitution of India. It is further observed and held that even the said claim is the property under Article 19(1) (f) of the Constitution of India and it is not saved by sub-article (5) of Article 19.

5.4. In the case of **Grid Corporation of Orissa v. Rasananda Das**, reported in **(2003) 10 SCC 297**, again the Hon'ble Supreme Court has observed and held that pension is not a bounty but it is a hard-earned benefit for long service, which cannot be taken away.

5.5. While considering the issue with respect to rise in the pension, the Hon'ble Supreme Court in the case of **Bharat Petroleum Management Staff Pensioners v. Bharat Petroleum Corporation Limited**, reported in **(1988) 3 SCC 32**, has observed and held that the rupee has lost its value to a considerable extent. Pension is no longer considered as a bounty and it has been held to be property. It is further observed that in a welfare State as ours, rise in the pension of the retired personnel who are otherwise



entitled to it is accepted by the State and the State has taken the liability.

5.6. In the case of **Poonamal v. Union of India**, reported in **(1985) 3 SCC 345**, it is observed and held by the Hon'ble Supreme Court that pension is not merely a statutory right but it is the fulfilment of a constitutional promise inasmuch as it partakes the character of public assistance in case of unemployment, old-age, disablement or similar other cases of undeserved want. It is further observed that relevant rules merely make effective the constitutional mandate. Pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but it is governed by the relevant rules and anyone entitled to the pension under the Rules can claim it as a matter of right.

5.7. In the case of **PEPSU RTC v. Mangal Singh**, reported in **(2011) 11 SCC 702**, the Hon'ble Supreme Court had occasion to consider the nature and object of 'pension'. It is held that the 'pension' is in a nature of right which an employee has earned by rendering long service to the employer. It is a deferred payment of compensation for past service. It is further observed that the object of providing pensionary benefit is to provide social security to the employee and his family after his retirement from



the service. It is further observed that Government's/employer's obligation under the Pension Scheme begins only when the employee retires and it continues till the death of the employee. It is a right attached to the office and cannot be arbitrarily denied. It is further observed that pension is a periodic payment of an amount to an employee, after his retirement from service by his employer till his death. It is observed in the said judgment that 'pension' is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long and satisfactory service. It is a social security plan consistent with the socio-economic requirements of the Constitution rendering social justice to a superannuated government servant.

5.8. In the case of **Subrata Sen v. Union of India**, reported in **(2001) 8 SCC 71**, it is observed by the Hon'ble Supreme Court as under:

"Pension is neither a bounty, nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the past services rendered. It is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in the lurch."



5.9. In the case of **State of Jharkhand v. Jitendra Kumar Srivastava**, reported in **(2013) 12 SCC 210**, it is observed and held by the Hon'ble Supreme Court that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. It is thus a hard benefit which accrues to an employee and is in the nature of "property". It is further observed and held that this right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

6. Having heard learned counsel appearing on behalf of the respective parties and the law laid down by the Hon'ble Supreme Court in the aforesaid decisions referred to hereinabove, not settling the retiral dues of the retired employees at the earliest and/or not paying the pension to the retired employees regularly are affecting the rights of such retired employees. It will be affecting their right to life, right to live with dignity, right to property. Any delay on the part of the employers/Universities/State Government in not settling the retiral dues/pensionary benefits/pension and not paying the retiral dues/pensionary benefits/pension regularly every month as and when due and payable cannot be tolerated. As such, the State, being the model employer, and even the Universities and



employers should have come out with a policy so that retiral benefits/pensionary benefits are settled at the earliest and they are paid the pension regularly every month as and when payable. However, unfortunately, both the Universities and the State Government are blaming each other and despite the joint meetings, they have failed to evolve any policy with respect to the retirement benefits/pensionary benefits/ payment of pension regularly.

6.1. At this stage, it is required to be noted that every year, the Universities are required to estimate their budgets as per the expenditure, including the payment of retirement benefits likely to be incurred in the financial year. The Universities are as such within the knowledge that how many employees are going to retire in any financial year. Therefore, while sending proposal with an estimated budget for a particular financial year, the Universities are required to consider the employees, who are likely to retire on attaining the age of superannuation, so that all those are paid the retiral benefits at the time of their retirement and thereafter they are paid the pension if they are entitled to pension regularly every month. Every month, the retired employees are not required to wait and beg and the retired employees are not required to be paid the pension as per the sweet will of the Universities and the State Government. The Universities and the State Government



are bound to make provision in advance so that all those retired employees are paid the pension regularly every month. Similarly, the settlement of retirement benefits are also required to be completed on or before the actual date of retirement of the concerned employee and the said exercise shall be completed much in advance so that on the date of retirement, he must get the retiral benefits which as such his right to get and which is considered and held to be right to property.

6.2. In view of the above and for the reasons stated hereinabove, the present petition is allowed and the following directions are issued to the respondent- State of Bihar and the respondent-University. It is further observed and held that the following directions shall be applicable to the retired employees to all other Universities of the State of Bihar also.

- (i) That the Universities shall send the estimated budget in advance, including the amount of retiral benefits/pensionary benefits/ pension to the retired employees, which are to be made in the next financial year. The same shall be in the prescribed format so that the State to make the budgetary provision and release the grant in favour of the concerned University accordingly in advance.



(ii) That the Universities shall settle the retiral benefits/pensionary benefits which may be available to the concerned employee on his retirement on attaining the age of superannuation or otherwise well in advance and, at least, three months before his actual date of retirement and he shall be paid the retiral benefits due and payable immediately on his retirement and on attaining the age of superannuation, failing which he shall be entitled to interest on the delayed payment of retiral benefits/pensionary benefits.

(iii) That the State Government must release the grant of the salary/pension to be paid to the retired employees in advance and in any case release the grant of three months in advance, meaning thereby, for example, for the month of March, 2018, the grant must be released and paid to the concerned University/Universities in the month of December, 2017/ January, 2018 and so on, so that every month the concerned retired employee is paid the pension regularly and on or before the 7th day of every English calendar month, meaning thereby the



Universities and the State Government are hereby directed to pay the pension to the retired employees every month regularly between the 1st and 7th of every English calendar month.

6.3. Present writ petition stands disposed of and allowed to the aforesaid extent with the above directions.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	09.10.2018
Transmission Date	

