

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22953 of 2018

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Bimal Kumar Bimal, Son of Late Yugal Kishor Lal, Resident of Quarter No. C-9, Main Road, R- Block, Patna, P.O.- G.P.O, P.S.- Sachivalay, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
2. The Vice-Chancellor, L. N. Mithila University, Kameshwar Nagar, Darbhanga
3. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
4. The Lalit Narayan Mithila University through its Registrar, Kameshwar Nagar, Darbhanga
5. The Registrar, Lalit Naryan Mithila University, Kameshwar Nagar, Darbhanga
6. The Finance Officer, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga
7. The Pension Officer, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 13402 of 2018

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Arvind Prasad Singh, S/o Panchbadan Prasad Singh, resident of Opposite Alka Cinema, Kapsiya, Ward No. 13, Nagdah, District- Begusarai retired as Head Accountant from G.D. College, Begusarai, a constituent unit of L.N. Mithila University, Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Vice-Chancellor, Lalit Narayan Mithila University, Darbhanga.
4. The Registrar, Lalit Narayan Mithila University, Darbhanga.
5. The Finance Officer, Lalit Narayan Mithila University, Darbhanga.
6. The Principal, G.D. College, Begusarai.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 15132 of 2018

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Murli Manohar Prasad Singh, S/o Chandradeo Pd. Singh, resident of Badalpur, Matihani, Mirjapur Bandbar, District- Begusarai, retired as Library Assistant from G.D. College, Begusarai, a constituent unit of L.N. Mithila University, Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Vice- Chancellor, Lalit Narayan Mithila University, Darbhanga.
4. The Registrar, Lalit Narayan Mithila University, Darbhanga.
5. The Finance Officer, Lalit Narayan Mithila University, Darbhanga.
6. The Principal, G.D. College, Begusarai.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 17468 of 2018

Kumud Kishore Prasad, S/o Late Ram Chandra Prasad, resident of Tilak Nagar, Station- Marg, Ward No. 30, District Begusarai, retired as Head Assistant From G.D. College, Begusarai, a constituent unit of L.N. Mithila University, Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar Patna.
3. The Vice-Chancellor, Lalit Narayan Mithila University, Darbhanga.
4. The Registrar, Lalit Narayan Mithila University, Darbhanga.
5. The Finance Officer, Lalit Narayan Mithila University, Darbhanga.
6. The Principal G.D. College, Begusarai.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 18073 of 2018

Umesh Prasad Choudhary, S/o Prabhu Choudhary, Resident of Mohalla- Harinath Nagar, Gali No.2, Near Vishnu Cinema, Ward No.23, District- Begusarai, Retired as Head Assistant From G.D. College, Begusarai, a Constituent Unit of L.N. Mithila University. Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar,



Patna.

- 3. The Vice-Chancellor, Lalit Narayan Mithila University, Darbhanga.
- 4. The Registrar, Lalit Narayan Mithila University, Darbhanga.
- 5. The Finance Officer, Lalit Narayan Mithila University, Darbhanga.
- 6. The Principal, G.D. College, Begusarai.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 22953 of 2018)

For the Petitioner/s : Mr. Hari Shankar Roy, Advocate
Mr. B. Mishra, Advocate
Ms. Tanuja Kumari Mishra, Advocate
Mr. Utkarsh Bhushan, Advocate
For the Respondent/s : Mr. Hitesh Suman, AC to SC- 13
For the University : Mr. Nadim Seraj, Advocate
Mr. Iqbal Asif Niazi, Advocate

(In Civil Writ Jurisdiction Case No. 13402 of 2018)

For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate
Mr. Bipin Kumar, Advocate
For the Respondent/s : Mr. AC to GA- 12

(In Civil Writ Jurisdiction Case No. 15132 of 2018)

For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate
For the Respondent/s : Mr. Madanjeet Kumar, GP- 20
Mr. Rajeev Ranjan, AC to GP-20
For the University : Mr. Nadim Seraj, Advocate
(In Civil Writ Jurisdiction Case No. 17468 of 2018)
For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate
For the Respondent/s : Mr. Madhaw Prasad Yadaw, GP- 23
For the University : Mr. Nadim Seraj, Advocate
Mr. Iqbal Asif Niazi, Advocate

(In Civil Writ Jurisdiction Case No. 18073 of 2018)

For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate
For the Respondent/s : Mr. Jitendra Kr. Roy-1, SC-13
Mr. U. K. Singh, AC to SC-13

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 18-10-2024

Considering the identical nature of grievance based upon similar facts, with the consent of all the parties; these batch of the writ petitions were heard simultaneously and being disposed off by this common order/judgment.

2. The issue involved in the batch of these writ



petitions is in narrow compass with regard to the applicability and entitlement of the petitioners to the benefit under the amended provisions of the Assured Career Progression Scheme (hereinafter referred to as 'the ACP Scheme') and its quantified benefits thereupon as well as the entitlement to interest on Group Insurance Scheme at the rate of 12.5% and the interest at the rate of 9% on the deferred dearness allowance along with statutory interest over the delayed payment.

3. Before answering the issue involved in the present writ petitions, the necessary facts, which are germane for adjudication are required to be taken note of.

4. The petitioners in all the batch of the writ petitions are retired Office Assistants/Accounts Assistant and Senior Selection Grade Assistant of L. N. Mithila University. Aggrieved by the inaction of the respondent State as well as University authorities, they are invoking the jurisdiction of this Court under Article 226 of the Constitution of India seeking a direction to ensure payment of full pension as well as difference of pension after according the benefit of ACP and 6th Pay Scale. The petitioners also sought a direction upon the authorities concerned to ensure payment of admissible Group Insurance and deferred dearness allowance along with admissible interest.



5. Upon being superannuated, the petitioners have been allowed the pension and the other benefits on the fixed pay scale after granting the benefit of ACP/MACP. However, despite lapse of a considerable period, when the petitioners have not been accorded the full and final pension and other retiral benefits/admissible dues, the petitioners approached before the Pension office of the respondent University. It is worth noting that in compliance of the order of the Hon'ble Supreme Court in the case of **State of Bihar and Another Vs. Sunny Prakash and Others (Civil Appeal No. 516 of 2013)**, reported in **(2013) 3 SCC 559**, the petitioners were accorded the admissible pay scale of Rs. 5500-9000/- with effect from 01.01.1996 and also the benefits of 1st and 2nd ACP by the Statutory Pay Fixation Committee.

6. Notably the petitioners have been allowed the pay scale of Rs.5500-9000/- on 01.09.1996, thereafter they were accorded the benefit of 1st ACP in the pay scale of Rs.6500-10500/- on 09.08.1999 considering the fact that the petitioners were also entitled to the benefit of 2nd ACP in view of the amendment in the ACP Rules in the year 2006 and further in the year 2008, the petitioners have also been accorded the benefit of 2nd ACP in the pay scale of Rs.10,000-15,200/- with effect from



the same date on 09.08.1999. Later on, the petitioners were granted the pay scale of Rs.15,600-39,100/- with Grade Pay of Rs. 6600/- with effect from 01.01.2006. On the basis of the aforementioned pay scales, pensions of the petitioners were duly fixed and they have been paid arrears of pension partially on last pay point of Rs.15,600-39,100/- with Grade Pay of Rs. 6600/- for two years.

7. Notwithstanding the fixation of the pension after due consideration of the prescriptions, as provided under the ACP Rules, and the amendment thereof, when the petitioners have not been allowed the pre and post retiral dues, the petitioners approached before this Court by filing the present writ petitions. Surprisingly, instead of making payment of arrears, the matter was placed before the Pay Verification Cell and without there being any notice or opportunity of hearing, the pay scale of the petitioners were slashed down by excluding the benefit of 2nd ACP in the pay scale of Rs.10,000-15,200/- and finally the petitioners have been accorded the pay scale of Rs.9300-34,800/- with Grade Pay of Rs.4600/- with effect from 01.01.2006.

8. Bereft of irrelevant details, the reason behind slashing down the pension of the petitioners, as has been



disclosed in various counter affidavits as well as supplementary counter affidavits filed on behalf of the State respondent authorities state that the petitioners were appointed on the post of Lower Division Clerk in the pay scale of Rs.260-408/-. Thereafter they had been granted promotion on the post of Upper Division Clerk in the pay scale of Rs.348-570/- by the University. Again the petitioners have been granted 1st Time Bound Promotion in the pay scale of Rs.505-665/- by the University, the replacement scale of the said pay scale in the Pay Revision of 01.01.1981 was Rs.850-1360/-. The petitioners had also been granted the benefit of 2nd Time Bound Promotion in the pay scale of Rs.880-1510/-, the replacement scale of the said pay in the pay revision of 01.01.1986 was Rs.1640-2900/-. After coming into force of ACP Rules, 2003, the petitioners have been granted the benefit of ACP on 02.01.2008 with effect from 09.08.1999, hence the petitioners received four financial upgradation in the entire service career, which is not permissible in the eyes of law.

9. The aforesaid action of the University granting additional financial upgradation was objected by the Pay Verification Cell of the State Government vide Letter No. 547 dated 16.03.2022. The Non-teaching staff has only three



financial up-gradation i.e. ACP-I, ACP-II and MACP in the entire career. The Pay Verification Cell of the State Government has initially issued first Pay Slip on the basis of admissibility of the pay scale of the petitioners. However, the University vide letter dated 25.02.2022 had requested for correction of the aforesaid pay slip that the pay slip is not in accordance with Clause 3 of the ACP Rules and thus requested the Pay Verification Cell of the State Government to re-consider the Pay Verification Certificate issued earlier to the petitioners. The University also furnished the re-fixation of pay point of the petitioners vide letter dated 07.03.2022. In the light of the aforesaid facts, the Pay Verification Cell of the State Government reconsidered the aforesaid pay point furnished by the respondent University and after thorough examination of the same, on being found error, revised the earlier Pay Verification Certificate of the petitioners by issuing a revised Pay Verification Certificate in the tune with the pay points fixed by the University. The Pay Verification has been revised after examining the service career of the petitioners by the University. The aforesaid pay fixation was done as per the provision contained in Statute-I and MACP scheme relating to grant of ACP and MACP to the Non-teaching employees of the Bihar



State Universities and its constituent units as promulgated vide Governor's Secretariat Memo No. 4112013429/G.S.(1) dated 04.03.2014.

10. The Education Department having considered the financial implication, further sent the file to the Finance Department, Government of Bihar for its opinion on specific point as to whether the petitioners are entitled for the next pay scale of Rs.10,000-15,200/- after granting 1st ACP on 09.08.1999, similar to the Assistant of State Government on 04.09.2023. The Finance Department, Government of Bihar after making certain correspondences with the department, finally concluded that the amendment made in the ACP Rules, 2003 for the State Government Employees will not be applicable to the University employees automatically. It has further been opined by the Finance Department, Government of Bihar that the department will proceed in the matter as per the Statute issued vide notification no. 429 dated 04.03.2014 by the Hon'ble Chancellor. In view of the aforesaid facts, the Department vide letter no. 2151 dated 30.10.2023 has informed the concerned University to proceed in the matter as per the provision contained in notification no. 429 dated 04.03.2014 issued by the Hon'ble Chancellor, since the department is bound



to obey the opinion rendered by the Finance Department, Government of Bihar. The respondent University, pursuant thereto has also informed the petitioners regarding the opinion rendered by the Finance Department, Government of Bihar.

11. The petitioners on being aggrieved by the decision of the respondent State as well as the University authorities slashing down the pay scale of the petitioners filed Interlocutory application seeking quashing of the consequential fixation made by the University as well as pay slips issued by the Pay Verification Cell on various grounds.

12. On the basis of the decision of the University as well as State slashing down the pay scale, calculation of pre and post retiral dues have been made and the order for recovery have also been issued, which are also put to challenge before this Court.

13. Learned Advocates for the petitioners have uniformly contended that the Assistants of the University have always been equivalent to the Assistants of the Secretariat /State Government. The State Government has already declared the non-teaching employees of the University equivalent to Government staff. In this regard, letter no. 123/C dated 25.02.1987 has also been issued at the level of the Secretary,



Government of Bihar, which also finds place in the judgment of **Sunny Prakash** (supra). The qualifications, nature of the duties and pay scales of the Assistant of the University have always been at par with the counterparts in the Secretariat and allied offices. In support of the aforesaid contention, a comparative chart has been incorporated in the rejoinder to the counter affidavit filed on behalf of the petitioner, which is quoted hereinbelow for appreciation of the matter.

Year	Pay Scale of Assistants of Secretarial & allied officials	Pay scale of Assistants of University / Colleges
01.03.1973	Rs. 260-408	Rs. 260-408
01.03.1977	Rs. 348-570	Rs. 348-570
01.04.1981	Rs.730-1080	Rs.730-1080
01.04.1983	Rs. 785-1210	Rs. 785-1210
01.01.1986	Rs. 1500-2700	Rs. 1500-2700
01.01.1996	Rs. 5500-9000	Rs. 4000-6000
Later on granted in the light of the judgment of the Hon'ble Supreme Court in the case of Sunny Prakash (supra)		Rs.5500-9000

14. Adverting to the comparative chart, learned Advocates for the petitioners contended that the gap created by the State Government in the 5th Pay Scale effective from 01.01.1996 has been subsequently bridged under the order of the Hon'ble High Court duly affirmed by the Hon'ble Supreme



Court in case of Sunny Prakash (supra). Pursuant to which, the petitioners and other identically situated persons have been accorded the pay scale of Rs.5500-9000/- who were holding the post of Assistants of the Universities/ Colleges, w.e.f. 01.01.1996, but their grade pay has been slashed down from 01.01.2006. The Assistants of Secretariat and allied offices have been granted the grade pay of Rs.4600/- from 01.01.2006 whereas the Assistants of the Universities/Colleges have been granted the grade pay of Rs.4200/-, which is also sought to be rectified in pursuance to the order of the Hon'ble Supreme Court. Further giving no regard to the order of the Hon'ble Supreme Court, the State Government instigated promulgation of the Statute-I for granting ACPs/MACP to the employees of the Universities and colleges without making any reference to the order of the Hon'ble Supreme Court in the case of **Sunny Prakash** (supra) and snatched away all the benefits, those that were given to the State Government employees under the ACP Rules and the amendments thereof. All the relevant amendments made in the ACP Rules, 2003 were deliberately not incorporated in the Statute-I bringing the ACP Scheme, 2003 infructuous for the Assistants of the Universities and Colleges.

15. It is the contention of the learned Advocates



for the petitioners that almost all the Assistants of the Universities and Colleges were accorded the benefits of merger scale and Time Bound/Selection Grade Scale, which were to be noted as financial up-gradation. Nonetheless, in the case of State Government employees they were not to be treated as financial up-gradation and allowed the benefit of 2nd ACP. It is vehemently urged that it is rarest case where the original Statute of the State Government have been promulgated and made applicable for the University employees leaving behind all the relevant amendments just to undo the decision of the Hon'ble Supreme Court in **Sunny Prakash** case (supra).

16. Learned Advocate for the petitioners have taken this Court to the ACP Rules, 2003 as well as the relevant amendments of the Rules thereof, which have taken place in the year 2006, contained in notification no. 1802 dated 23.03.2006 and further amended in the year 2008 vide notification no. 769 dated 28.01.2008. Vide amendment dated 23.03.2006, Clause 3(1) has been deleted in the Rule and Clause 1(k) has been inserted with a clarification that merger, if any, given to an employee, shall not be treated as promotion meaning thereby in case an employee has been given the benefit of merger, he is entitled to get the benefit of ACP. Further the Time Bound



Promotion / Selection Grade Scale given to an employee prior to 01.01.1996 will not be treated as financial up-gradation. Likewise, the amendment made in the year, 2008, the Government of Bihar prescribed the Rule that in case of availability of promotional avenues, at the time of granting ACP, an employee will be given the pay scale of promotional post and not as per schedule prescribed in the ACP Rules. Suffice it to say that in the Universities of Bihar, there is promotional hierarchy and provision where an Assistant can be promoted to the post of Section Officer and the Section Officer to the post of Assistant Registrar having Pay Scale of Rs.15,600-39,100/- with Grade Pay Rs.6600/-, which had rightly been accorded to the petitioners.

17. In support of the contention regarding grant of 1st and 2nd ACP to the Assistants in Pay Scale of Rs.6500-10500/- and Rs.10000-15200/- and replacement scale of Rs.15,600-39,100/- with Grade Pay of Rs.6600/- reliance has been placed on a judgment/order of this Court in the case of **Indranath Jha Vs. The State of Bihar & Ors (CWJC No. 4722 of 2020)**. The order of the learned Single Judge passed in the aforementioned case has also been affirmed in the Letters Patent Appeal, as the same stood dismissed on account of non-



prosecution. Further reliance has also been placed on a judgment/order of this Court in C.W.J.C. No. 14582 of 2018 dated 25.09.2018.

18. On the point of having no jurisdiction or authority to Pay Verification Cell to alter the pay fixation made by the Statutory Pay Fixation Committee of the University, reliance has been placed on a decision rendered in C.W.J.C. No. 4722 of 2020, duly affirmed in L.P.A. No. 410 of 2021.

19. Learned Advocates for the petitioners also contended that so far the interest at the rate of 12.5% on the amount of GIC and 9% interest payable on Deferred Dearness Allowance, the issue has already been set at rest in various pronouncements, including the order of the learned Coordinate Bench of this Court in C.W.J.C. No. 349 of 2021, C.W.J.C. No. 8700 of 2017, C.W.J.C. No. 18678 of 2018 and various other cases.

20. Learned Advocates for the petitioners lastly contended that the recovery made by way of adjustment is quite contrary to the mandate of the Apex Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih**, reported in (2015) 4 SCC 334, as also the order of this Court dated 08.07.2021 passed in C.W.J.C. No. 2466 of 2019.



21. This Court has given anxious consideration to the submissions advanced on behalf of the learned Advocates for the respective parties and meticulously examined the materials brought on record.

22. In **Som Prakash Rekhi Vs. The Union of India & Anr.**, reported in **1981 (1) SCC 449**, V. R. Krishna Iyer, J, has stated that “social justice is the conscience of our Constitution, the State is the promoter of economic justice, the founding faith which sustains the Constitution and the country is Indian humanity. The State as a model employer is expected to show fairness in action.”

23. The Hon’ble Supreme Court in **Balram Gupta v. Union of India and Another**, reported in **AIR 1987 SC 2354** has observed that as a model employer the Government must conduct itself with high probity and candour with its employees.

24. In **Bhupendra Nath Hazarika and Another vs. State of Assam and Others**, reported in **2013 (2) SCC 516** while laying emphasis on the role of the State as a model employer, the Hon’ble Supreme Court observed “It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created



where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized.”

25. In **State of Haryana & Ors. v. Piara Singh & Ors.**, reported in **1992 (4) SCC 118**, the Hon’ble Supreme Court has ruled that the main concern of the court in such matters is to ensure the rule of law and to see that the State and Executive act fairly and give a fair deal to its employees consistent with the requirements of Articles 14 and 16 of the Constitution of India.

26. The welfare State denotes a concept of Government wherein the State not only plays a key role in the protection and promotion of economic and social well-being of its citizens, but it also refers to greatest of good for the greatest number and the benefit of all and the happiness of all.

27. It is high time, the State being a welfare State



and a model employer is required to bring its house in order, the employees of the University cannot left in lurch; it is the need of the hour to mollify the heart burning and resentment amongst the non-teaching employees of the University. The State must not behave like adversary litigant and the paucity of fund should not be a ground to compel each of member to approach the Court and bring favourable order, albeit their case based on parity. The dispute howsoever grave, it must give a quietus.

28. The Government of Bihar in the Department of Education vide Government order contained in letter no. 123/C dated 25.02.1987 declared the Non-teaching staff of the Universities and Constituent Colleges equivalent to the Government staff.

29. On 16.07.2003, the College Employee Federation entered into an agreement between the State Government regarding parity between the employees of the State as well as the Universities. In pursuant to the compromise arrived at between the Federation and the State, the State Government apprised the Vice-chancellors of the Universities of the State of Bihar and requested for necessary action. Irrespective of the aforementioned facts, the State Government did not stand on its demand, leading to complete disruption of



educational activities of the Colleges and Universities in the State of Bihar on the strike called for by the Federation; meeting was held and an agreement was again arrived at and a letter was issued by the Government for implementation of the agreement, thus the strike was recalled. Again on account of non implementation of the agreement/understanding, the Federation was constrained to go on a strike. Due to an indefinite strike, a letter was written by one Sunny Prakash, which was treated as Public Interest Litigation; an intervention application was filed by the Federation in the aforementioned PIL in the Hon'ble Supreme Court and accordingly it numbered as Civil Appeal No. 516 of 2013.

30. In the aforementioned case, the contention of the State was that the agreement of the State with the Federation dated 18.07.2007 was not in accordance with the Rules of Executive Business, Government of Bihar, which are statutory rules framed under Article 166 (3) of the Constitution of India. The Hon'ble Supreme Court while considering the matter have taken note of the demands of the Federation, which were accepted by the Government to be acted upon within one and a half month as per rules. The demands, inter alia, were as follows:



“1. 50% dearness allowance may be merged with basic pay.

2. Medical allowance may be increased from Rs. 50/- (Rupees fifty) to Rs. 100/- (Rupees hundred).

3. Facility of ACP may be given to the employees.

4. Head Assistant and Accountant of the colleges may be designated as Section Officer at the department level.

5. Pay scale of Rs. 5500-9000 may be granted to the assistants of colleges and university.

6. Assistant Librarian and PTI who are possessing qualification fixed by UGC, may be granted UGC pay scale.

7. Library Assistant, sorter, routine clerk, correspondence clerk may be granted a pay scale of Rs.4000-6000/- at departmental level.

8. Facilities of accumulation of 240 days' earned leave and encashment may be granted to the employees on a par with the employees of the State Government which will be admissible similarly to the Class III and Class IV grade employees.

9. Ward servant may be designated as hostel servant.

10. Anomalies regarding the pay scale of University Engineer, Assistant Engineer and Junior Engineer and Electrician may be



removed.

11. Storekeeper may be treated as an assistant and pay scale may be given accordingly.”

31. The Hon’ble Supreme Court having highlighted the several correspondences made by the State Government to the Federation held that the provisions of Article 166 of the Constitution are only directory and not mandatory in character and if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government. The Hon’ble Supreme Court in its penultimate paragraph held as follows:

21. In the case on hand, we have already demonstrated various communications issued by the Government for implementation of the earlier decision. In such circumstance, we have no reason to reject those communications sent by the higher level officers of the State Government.

22. Inasmuch as all the persons who were competent to represent were the parties to the said Agreement referred to above and after making such commitment by the State Government, as rightly observed by the High Court, we are also of the view that the same has to be honored without any exception. By the



impugned order, the High Court has not only directed the State Government to implement the commitment given by it having been reduced into writing on 18.07.2007, honoured by the State Government itself in subsequent letters/correspondences but also directed the Federation to call off the strike immediately in the interest of the student community.

23. We also make it clear that though the High Court termed the impugned order as interim in nature, considering the fact that the writ petition came to be filed by a student in the interest of the student community by writing a letter which was treated as a PIL, no further order need be passed in the said writ petition, namely, CWJC No. 10870 of 2008 pending on the file of the High Court at Patna and it stands closed.

24. In view of our conclusion, we direct the State of Bihar to implement the impugned order of the High Court dated 07.08.2008 within a period of three months from the date of receipt of copy of this judgment. The appeal filed by the State of Bihar is dismissed with the above direction. There will be no order as to costs.

32. It is worth noting that the Hon'ble High Court vide order dated 07.08.2008 passed in C.W.J.C. No. 10870 of



2008 has been pleased to observe, which is quoted hereinbelow:

“Any agreement is founded on the trust that it would be carried out by the concerned parties. Where the State Government or its functionaries happen to be party to an agreement, it is not even conceivable that the agreement has been entered into to be followed in breach. Any commitment by the State Government has to be honoured and without any exception.”

33. In the light of such observation, the Hon’ble Court passed the order, inter alia, that the Chief Secretary, Government of Bihar, Patna shall ensure that the commitment given by the State Government to the Federation having been reduced in writing on 18th July, 2007, is honoured by the State Government and it is implemented within one month from today.

34. It is this order, which was put to challenge in Civil Appeal No. 516 of 2013 and the same stood dismissed by the Hon’ble Supreme Court vide order/judgment dated 18.01.2013 with a direction to the State of Bihar to implement the order of the High Court dated 07.08.2008 within a period of three months.

35. The State of Bihar agreed upon to ensure the pay scale of Rs.5500-9000/- to the Assistants of the Colleges



and the Universities and simultaneously granted the same. Likewise, the State of Bihar also agreed to act upon the terms of the agreement to allow the benefit of ACP to the non-teaching employees of the Universities and, accordingly, granted the same in pursuant to the ACP Rules, 2003, but surprisingly later on did not allow the benefit of amended provision of ACP Rules, 2003, which took place firstly in the year 2006 vide notification no. 1802 dated 23.03.2006 and subsequently in the year 2008 vide notification no. 769 dated 28.01.2008.

36. This court is at lost that once the State of Bihar has accepted to grant the benefit of assured career progression under the ACP Rules, 2003, how the amendment of the provisions of the ACP Rules would not be applicable to the employees of the universities, when the date on which commitment was given by the state government to the Federation reduced in writing on 28.07.2007, there had already been amended provision in existence vide notification no.1802 dated 23.023.2006. The aforesaid notification explicitly postulates by deleting Clause 3(i) that merger, if any, given to an employee will not be treated as promotion. Meaning thereby, in case an employee has been given the benefit of merger, he is entitled to get the benefit of ACP. The aforesaid prescription



also clarified under Clause 2(1)(ka) that Time Bound Promotion/Selection Grade given to an employee prior to 01.01.1996 will not be treated as financial upgradation. It is further to be noted that when the matter was placed before the learned Division Bench of this Court in C.W.J.C. No. 10870 of 2008 and the order has been passed on 07.08.2008 directing the Chief Secretary, Government of Bihar, Patna to ensure the implementation of the commitment given by the State Government, which order also got affirmed by the Hon'ble Supreme Court in Civil Appeal No. 516 of 2013, title as **State of Bihar & Anr. Vs. Sunny Prakash & Ors.**, [(2013) 3 SCC 559] the amended provision of Rule, 2003 vide notification no. 769 dated 28.01.2008 had already been in existence. The said amended provision duly inserted in the ACP Rules, 2003 explicitly postulated that in case of availability of promotional avenue at the time of granting ACP, an employee would be given the pay scale of promotional post and not as per the schedule prescribed in the ACP Rule.

37. The amended Rules, 2006 and 2008 apart from clarificatory in nature certain provisions have been inserted and deleted to make the ACP Rules, 2003, more workable and beneficial to the employees; nevertheless the same



have made applicable and brought in force with effect from 09.08.1999, the date on which ACP Rules, 2003 was promulgated. The rules have been amended in exercise of the power conferred under the proviso to Article 309 of the Constitution of India. Now the question would arise as to whether any notification issued by the State or the Chancellor can run counter to the Act and the Rules and made its provisions redundant and inapplicable, without any justifiable reason and without making any amendment in the Rules itself or by necessary implication.

38. In the gamut of the aforesaid facts, this Court is unable to accept the contention of the State of Bihar that the amendment made in the ACP Rules, 2003 will not be applicable to the employees of the Universities automatically, nonetheless, applicable to the employees of the State Government.

39. It would be relevant to observe that in order to fortify the contention with regard to non-applicability of amended provisions of ACP Rules, 2003, the Government of Bihar in the Department of Finance opined that the department will proceed in the matter as per the Statute issued by notification no. 429 dated 04.03.2013 by the Hon'ble Chancellor, which is only applicable in the case of the



employees of the Universities and Constituent Colleges in the matters of granting ACP/MACP, but the amendment made in the ACP Rule for the State Government employees shall not be applicable in the case of employees of the Universities and the Constituent Colleges, unless there is specific order of the competent authority. The aforementioned contention of the State Government refuting to grant the benefits of amended provision of the ACP/MACP is not justified in view of the fact that once a decision has been taken by the Government of Bihar vide Educational Department GO No.123/C dated 25.02.1987 declaring and treating the non-teaching staffs of the Universities and Constituent Colleges equivalent to the Government staff and further implemented the prescription of ACP/MACP to the employees of the Universities and Constituent Colleges, the State Government cannot turn around and rely upon notification no. 429 dated 04.03.2013 (Statute-I) that in absence of any specific order with regard to applicability of the amended provision of ACP Rule, the same cannot be made applicable in the case of the employees of the Universities and Constituent Colleges automatically. The Statute of aforementioned notification no. 429 came into effect on 04.03.2013 and thus the right once vested in the employees of the Universities and Constituent



Colleges granting benefits of ACP/MACP, way back in the year 2003, after promulgation of ACP Rules, 2003 and further its amendment in the year 2006 and 2008, which brought the amended prescription in force, with effect from 09.08.1999, i.e. the date of promulgation of ACP Rules, 2003 it cannot be divested and snatched away by a subsequent notification of the year 2014.

40. This Court in the foregoing paragraph has taken note of the fact that the date on which the terms and conditions of the agreement has been reduced into writing and the order has been passed to implement the same by the Division Bench of this Court in C.W.J.C. No. 10870 of 2008, the amended provisions of the ACP Rules were already in existence. Thus, any notification or Government decision, which would make the terms and conditions of the agreement redundant and found in the teeth of the order passed by the Apex Court in the case of **Sunny Prakash** (supra) shall to that extent be declared invalid and inoperative as such.

41. The caveat stipulated in the notification no.429 dated 04.03.2014, if allowed to apply retrospectively, barring the applicability of the amended provisions of the ACP Rules to the case of the employees of the Universities and



Constituent Colleges, it will create an anomalous situation and render the decision of the Government to treat the employees of the Universities and Constituent Colleges at par with the Government employees, otiose.

42. In the opinion of this Court, the notification no. 429 dated 04.03.2014 would have no application in the case of the petitioners and even for the sake of technicalities, if there is any requirement of any order from the competent authority to get the amended prescription of the ACP Rules, 2003 applicable in the case of the employees of University and its constituent colleges, it shall be deemed to be granted in view of the discussions made hereinabove and especially in the light of the mandamus issued by the Division Bench of this Court and duly affirmed by the Apex Court in the case of **Sunny Prakash** (supra).

43. Thus, in the aforementioned circumstances, this Court is of the opinion that the ACP Rules, 2003 with all its amendment framed for the State Government employees is also applicable to the non-teaching employees of the Universities and Constituent Colleges; that being so the petitioners are entitled to the benefit of the amended provisions and its consequential financial outcome.



44. So far the issue(s) with regard to payment of amount of Group Insurance with interest at the rate of 12.5% and deferred D.A. with interest at the rate of 9% are concerned, numerous orders have been brought before this Court that the employees, who have superannuated prior to the decision taken by the Syndicate on 22.09.2018, they have been allowed interest at the rate of 12.5% over the amount of Group Insurance. There must be uniformity, which is the hallmark of good governance. Any action of the State authorities and the Universities is to be tested on the anvil of Article 14 of the Constitution of India; and such action is vulnerable, if, prima facie, based on discrimination. The persons, who have approached before this Court, such as Bina Rai in C.W.J.C. No. 349 of 2021, Chitra Mullick in C.W.J.C. No. 18678 of 2018, Laxmi Devi in C.W.J.C. No. 4666 of 2018, Dr. Moti Lal Yadav in C.W.J.C. No. 8700 of 2017 and many others have been allowed the interest at the rate of 12.5% over the GIS and 9% payable on deferred DA, the University and the State accepted the decision of this Court and the legality of the said decisions have never been questioned. In such circumstances, denying the similar benefits to others would be wholly unjustified and, as such, unsustainable.



45. It would be apposite to quote the relevant paragraph of the decision of the learned coordinate Bench of this Court dated 24.01.2018, passed in C.W.J.C. No. 8700 of 2017 (Dr. Moti Lal Yadav Vs. The State of Bihar & Ors.)

“4. It has been repeatedly coming to the notice of the Court that despite a modality having been laid down for calculation of Earned Leave and for payment of Group Insurance at the rate of 12.5% compound interest, the same is not being adhered to by the Universities, including L.N. Mithila University. The Court would only indicate that despite repeated orders of the Court which have been upheld till the Hon’ble Supreme Court, if still, in individual cases, the same order has to be passed by various Benches, the same is totally unacceptable, for an order passed *in rem* is to be duly implemented by the authorities concerned. If a particular issue has been decided and also in terms of the Litigation Policy of the State itself, once any issue is decided as a general proposition of law, all the authorities are required to confirm to and comply with such order. Thus, the Court would make a general observation that henceforth, if it comes across any violation with regard to the mode of calculation of Earned Leave and payment of 12.5% compound interest on Group Insurance, *suo motu* contempt proceeding shall be initiated. In



this regard, the Court would refer to the judgment passed in C.W.J.C. No. 11219 of 2011 dated 31.08.2015, which has been affirmed in L.P.A. No. 1253 of 2016 by order dated 11.01.2018.”

46. This Court had earlier opined that the State Government have the power to exercise control over the financial affairs of the Universities and, therefore, it does not find any illegality in the constitution of the Pay Verification Cell under the Department of Education. The issue with regard to authority and role of the Pay Verification Cell has already been set at rest through various pronouncements of this Court, as also in the case of **Kedar Nath Pandey and Ors. Vs. the Magadh University and Ors.** (C.W.J.C. No. 7636 of 2014) that the objection of the Pay Verification Cell cannot have the effect of annulling any notifications issued by the University, unilaterally, nor can such objection have the effect of modifying the previous notification issued in favour of the petitioners. Such objections will be treated as audit objections for which notices would be required to be given to the University concerned, which in turn will issue notice to the concerned affected teachers and employees, seek their response and the University thereafter will revert to the Pay Verification Cell. If the response of the University or the concerned employee is not found to be



satisfactory, the State Government can issue appropriate direction to the University to issue appropriate order. The final notification and amendment or corrigendum or clarification of the previous decision has to be taken by the University because Pay Verification Cell does not have any power in this regard.

47. In view of the discussions made hereinabove, all these batch of writ petitions stands allowed to the extent indicated herein. The Court further directs the respondent University to refix the pension of the petitioners and other benefits after according the benefit of amended provision of the ACP/MACP Rules and further to grant the interest at the rate of 12.5 % over the GIS and interest at the rate of 9% on the deferred DA.

48. Suffice it to observe that in view of the present decision of this Court any order of recovery passed against the petitioners and modifying or reducing the pay scale is hereby held to be unsustainable and, as such, the same stands cancelled. All the interlocutory applications stand disposed off.

49. The entire calculation must be made within a period of three months from the date of receipt/production of a copy of this order and the consequential benefits must be paid to the petitioners within a further period of two months after



getting it verified from the Pay Verification Cell..

50. There shall be no order as to costs.

(Harish Kumar, J)

uday/-

AFR/NAFR	AFR
CAV DATE	22.07.2024
Uploading Date	21.10.2024
Transmission Date	NA

