

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.516 of 2019**

Dr. Shambhudhar Jha, Son of Tripati Narayan Jha, Resident of Village-Ganauli, P.S. Gonauli, District-Madhubani.

... .. Petitioner

Versus

1. Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, District-Darbhangha through its Registrar.
2. Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga, Distt.-Darbhanga.
3. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga, Distt.-Darbhanga.
4. The State of Bihar through Principal Secretary, Department of Education, Govt. of Bihar, Patna.
5. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.

... .. Respondents

with

**Civil Writ Jurisdiction Case No. 12689 of 2023**

Dr. Shubha Chandra Mishra, Son of Late Babu Mishra, Resident of Jhanjharpur Bazar, P.S. Jhanjharpur, District- Madhubani.

... .. Petitioner

Versus

1. The State of Bihar through Additional Chief Secretary, Higher Education, Department of Education, Government of Bihar, Patna.
2. The Additional Chief Secretary, Higher Education, Department of Education, Government of Bihar, Patna.
3. Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga through its Registrar.
4. Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga, District- Darbhanga.
- 5.. Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga, District- Darbhanga.

... .. Respondents



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**Appearance :**

(In Civil Writ Jurisdiction Case No. 516 of 2019)

For the Petitioner/s : Mr. Durga Nand Jha, Advocate  
For the State : Mr. Prabhakar Jha, GP-27  
For the University : Mr. Deepak Kumar, Advocate  
Mr. Mukund Mohan Jha, Advocates

(In Civil Writ Jurisdiction Case No. 12689 of 2023)

For the Petitioner/s : Mr. Durga Nand Jha, Advocate  
For the State : Mrs. Binita Singh, SC-28  
Mr. Vivek Anand Amritesh, AC to SC-28

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR  
ORAL JUDGMENT**

**Date : 21-11-2024**

Considering the identical nature of grievance based upon the similar facts, with the consent of the parties, both the writ petitions have been heard together and disposed off by a common order.

2. Heard Mr. Durga Nand Jha, learned Advocate for the petitioners and Mr. Prabhakar Jha, learned GP-27 (in CWJC No. 516 of 2019) and Mrs. Binita Singh, learned SC-28 (in CWJC No. 12689 of 2023). The University is represented through Mr. Deepak Kumar, learned Advocate along with Mr. Mukund Mohan Jha, learned Advocate.

3. The petitioners were duly appointed on the post of Lecturer against the sanctioned post of different subjects in Dr. Jagannath Mishra Sanskrit College Pastan Navtoli, Madhubani (for short 'the College'), an affiliated degree Sanskrit College under the Kameshwar Singh Darbhanga Sanskrit University (for brevity 'the University'). Upon



attaining their age of superannuation after completing 65 years, the petitioners were superannuated. Despite the recommendation made by the College with a request to pay the admissible amounts under Triple Benefit Scheme to the petitioners, they were not accorded their admissible benefit(s) and subsequently, the pension of the petitioners have been fixed on the lower pay-scale without taking into consideration of their length of service and the pay fixation made by the University; compelling them to invoke the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution. The petitioners sought a direction upon the respondents to pay retiral benefits, including full pension on the basis of last pay drawn in 6<sup>th</sup> Pay Revision pay-scale, leave encashment for 300 days, provident fund, gratuity and other admissible retiral benefits in the light of Resolution dated 05.11.1980 and the amendment of the statute thereon by the University as contained in letter no. 1709/08 dated 28.03.2008 and also in the light of the Notification contained in Memo No. 5447-5481 dated 22.07.2014 issued under the signature of the Registrar by the order of the Vice Chancellor of the University. The petitioners, in sum and substance, seek an appropriate declaration that the University while fixing their pension ought to have considered that they



fulfill the qualifying service of more than 35 years as provided in Part-II, Section (ii) Clause 14(1) and the Clause 14(iii) of the statute and thus they are entitled to get full pension as well as the difference of pension by revising their P.P.O(s).

4. The short facts, which led to the filing of the present writ petitions, are that the petitioners were initially appointed on the post of Lecturer in the year 1979/1980 against the sanctioned and vacant post under the different subjects. The services of the petitioners were duly approved by the University from the date of their initial appointment and further concurred by the Bihar College Service Commission (hereinafter referred to as 'the Commission'). Pursuant to the approval of the appointment of the petitioners, they were discharging their duty in the College and were being paid their salary by the University out of the fund released by the Government. While the petitioners were working on the sanctioned post against different subjects, an advertisement bearing no. 852/94 was published by the Commission for selection of Principal in Permashwari Veena Sanskrit College, Andharatharhi. The petitioner in C.W.J.C. No. 12989 of 2023 submitted his application and on being found eligible and having seen good performance in the interview, his name was recommended for



appointment against the post of Principal. Pursuant to which, the Secretary of the Governing Body of the College issued appointment letter vide letter no. G-60/2000 dated 05.05.2000.

5. Similarly, one another advertisement bearing no. 882/94 was issued, against which the petitioner in C.W.J.C. No. 516 of 2019 submitted his application for permanent appointment on the post of Lecturer; on being found eligible, his name was recommended by the Commission for permanent appointment vide letter no. 169 dated 20.09.2002 and, accordingly, the service of the petitioner was confirmed and made permanent by the Governing Body of the College vide letter no. 89/02 dated 03.10.2002. Thereafter, the pay of the petitioners was fixed by the University on the basis of recommendation of the Pay Fixation Committee vide recommendation dated 24.05.2012 under 5<sup>th</sup> and 6<sup>th</sup> Pay Revision Committee and it was duly approved by the syndicate and the petitioners had been continuously discharging their duties against their respective posts. In the meantime, the University came out with a Notification contained in Memo No. 5447/5481/14 dated 22.07.2014, in pursuant to statute framed by the Chancellor contained in Memo dated 15.01.2014, whereby the Triple Benefit Scheme i.e. pension, gratuity and



provident fund have been made applicable to the staffs of the affiliated College. Accordingly, the affiliated Colleges were directed to submit their liabilities in respect of retiral benefits with respect to staffs superannuated between 31.08.2010 and March, 2015.

6. Since in the afore-noted Notification, extending the triple benefits, there was a rider in the statute to the extent of minimum 250 students appearing every year for the preceding ten years; the same was questioned in **C.W.J.C. No. 9726 of 2017** titled as **“Dr. Jitendra Narayan Singh and Another v. The Hon’ble Chancellor of Universities of Bihar and Others”** and the Hon’ble Court vide judgment dated 23.07.2018 declared the said condition *ultra vires*. In the meantime, both the petitioners attained their age of superannuation after completing 65 years.

7. Initially, counter affidavit as well as supplementary counter affidavit have been filed by the University and the State officials with a categorical stand that the State Government decided to extend the Triple Benefit Scheme to the Deficit Grant Affiliated Colleges/Deficit Grant Minority Colleges; and the said decision has also got approval of the Cabinet, leading to amendment in the statute. Pursuant to the Cabinet decision, the



Government of Bihar in the Human Resources Development Department issued Resolution No. 171 dated 18.01.2011, extending the Triple Benefit Scheme to the Deficit Grant Affiliated Colleges and Deficit Grant Minority Colleges. The respondents have also admitted the position that against the order passed by this Court in C.W.J.C. No. 9726 of 2017, the State have preferred S.L.P. bearing no. 23489 of 2019 before the Hon'ble Apex Court, which came to be dismissed vide order dated 02.08.2019. After order of the Hon'ble Apex Court as noted hereinabove, the issue has been referred to the Finance Department, Government of Bihar, for its opinion, since the effect of the judgment would incur a huge financial liability on the State exchequer. Finally, steps were taken to sanction and release the fund for extending the benefit of Triple Benefit Scheme to the employees of the deficit grant-in-aid colleges and the Education Department and the University agreed to get the pay verification done by the University through Pay Verification Cell of the Education Department. The University after making fixation of the pay sent the same to Pay Verification Cell of the Education Department. The Pay Verification Cell of the Education Department verified the pay fixation made by the University, however, certain queries regarding date of



appointment and grant of grade pay were made. The Education Department vide different letters, directed the University to get the pay fixation of the writ-petitioners verified by the Pay Verification Cell positively and inform the Education Department.

8. In reply to the queries made by the State officials, the University informed the Education Department that the University made re-fixation of pay of the petitioners, whereby the objection raised by the Pay Verification Cell regarding grade pay has been meted out. So far the query made by the Pay Verification Cell regarding date of appointment, it has been stated that it would be appropriate that the same may be rectified by the syndicate. The Pay Verification Cell of the Education Department finally found that the date of permanent appointment of the petitioners on the recommendation of the Commission is of the year 2002, whereas pay fixation has been made by the University w.e.f. 1979-1980 as per the date of their initial appointment.

9. The matter was placed before the Pay Fixation Committee and also to the syndicate, and accordingly, vide letter no. 1265 dated 10.08.2021 informed the Education Department that the effective date of appointment of the petitioners would



be the date of permanent appointment made on the recommendation of the Commission. Accordingly, the Pay Verification Cell of the Education Department issued entitlement slip in favour of the petitioners treating the effective date of their appointment with effect from the date of permanent appointment in the year 2002.

10. On account of giving a complete go by to the past services with effect from the date of initial appointment of the petitioners in the College and treating the effective date, with effect from the date on which the permanent appointment was made on the recommendation of the Commission, fixation of the pension of the petitioners have been done in a lower pay, compelling the petitioners to challenge the same in the present writ petitions.

11. The stand of the petitioners is summarized that they were initially appointed after following the procedure of appointment as far back as in the year 1979-1980 and the same was approved by the University. Further the petitioners were getting salary by the University out of the fund released by the State Government. The pay fixation order was issued by the competent Statutory Body of the University and on the basis of the recommendation of Promotion Committee, the petitioners



were also allowed time bound promotion.

12. Referring to letter no. 906 dated 16.07.1982, especially Clause-8 thereof, it is contended that the Government has taken a decision that those temporary teachers whose services were duly recognized or shall be recognized, they shall be given the benefit of their seniority and pay increment with effect from the date of their initial appointment; however, they shall not get the benefit of increment prior to 01.07.1982. The decision of the Government as contained in letter dated 16.07.1982 was duly considered by this Court in C.W.J.C. No. 5859 of 1996 and the Hon'ble Court vide its order dated 04.03.1998 has held that the concerned teachers are entitled to get the annual increment in terms of the Government decision as also in terms of Clause-4 of 1986 absorption statutes. The Court also held that the temporary Lecturers whose services were regularized will be entitled to the benefit of their past service for computing their qualifying service for promotion under the time bound promotion statutes. The said judgment has finally been affirmed by the Hon'ble Apex Court.

13. Taking note of the aforesaid fact, subsequently, this Court vide its order dated 18.09.2018 passed in C.W.J.C. No. 20310 of 2010 has been pleased to direct the University to



implement the judgment and order of One Man Committee. Pursuant to which, the University has allowed all the benefits from the date of the initial appointment. The copy of the aforementioned decision has been marked as Annexure-6 to the main writ application. It is also the contention of the petitioners that, in case of **Dr. Kedarnath Pandey and Others v. The State of Bihar and Others** vide judgment dated 15.01.2015 passed in **C.W.J.C. No. 7636 of 2014** as also in the case of **Dr. (Smt.) Abha Rani and Others v. Magadh University and Others** vide judgment dated 16.03.2018 passed in **C.W.J.C. 511 of 2018**, the learned Court has categorically held that “*pay is required to be fixed by the University and not by the Government.*”

14. Mr. Jha, learned counsel for the petitioners, finally urged that pay of the petitioners were revised from time to time taking into consideration of their date of initial appointment way back in they year 1979-1980 and subsequently in order to make the temporary appointment of the petitioners as permanent, the Commission advertised the post and on being found eligible, their names were recommended by the Commission for permanent appointment and finally services of the petitioners were approved. The matter of the petitioners



were duly placed before the Governing Body of the College, in which it was decided that since the petitioners have been continuously working w.e.f. 1979-1980 and are getting regular salary fixed by the Statutory Committee of the University, their services are confirmed pursuant to the recommendation of the Commission without any break in the service and thus in any view of the matter, the services of the petitioners are required to be considered for the calculation of pension with effect from the date of their initial appointment till the date of their superannuation.

15. Reliance has also been placed on a judgment rendered by the learned Division Bench of this Court in **L.P.A. No. 198 of 2016** titled as “**The Registrar General, Patna High Court v. Ram Vyas Dubey and Others**”, wherein the learned Division Bench vide its order dated 26.06.2023 taking note of the rule 58 and 59 of the Bihar Pension Rules, 1950 (for short ‘the Rules, 1950’), which deals with conditions of service of a government servant to qualify for pension held that “*reading of the two provisions clearly provide that even if a person has worked in a temporary capacity and has not been confirmed, if his service on any post is continuous and is for more than 15 years, then it may be considered as pensionable under Rule 59*



*of the Bihar Pension Rules, 1950.*” The learned Division Bench of this Court, accordingly, affirmed the decision of the learned Single Judge.

16. This Court has anxiously heard learned Advocates for the respective parties and also perused the materials available on record.

17. The facts are not in dispute. Admittedly, the petitioners were appointed on the post of Lecturer against the vacant and sanctioned post, which was duly accepted and approved by the University and subsequently approved by the Commission from the date of their initial appointment. While the petitioners were working in the College, which was an affiliated degree Sanskrit College under the Kameshwar Singh Darbhanga Sanskrit University, pursuant to an advertisement for permanent appointment, they had submitted their application and finally on being found eligible, their names were recommended by the Commission for permanent appointment in the year 2002. The services of the petitioners were confirmed and approved by the Governing Body of the University vide different letters on the basis of recommendation made by the Commission with effect from the date of their initial appointment. Time to time, on the recommendation of the Pay



Fixation Committee, pay-scales of the petitioners were duly revised and the same was approved by the syndicate. It is also the admitted position that the Government has taken a decision to extend the benefit of Triple Benefit Scheme to the employee(s) of deficit grant-in-aid colleges and, in this regard, appropriate steps were taken to sanction and release the fund. There is no dispute that prior to the permanent appointment of the petitioners, they were temporarily working against the sanctioned post in the College and the services rendered on temporary basis were duly confirmed and approved by the University on the recommendation of the Governing Body of the University.

18. Reliance of the petitioners on the decision of this Court in the cases of **B.R. Ambedkar Bihar University Teachers Association v. The State of Bihar and Others [(1998) 2 PLJR 103]** and **Dr. Sureshwar Jha v. The State of Bihar and Others [C.W.J.C. No. 20310 of 2010]**, has material bearing over the issue that the temporary Lecturers whose services were regularized will be entitled to the benefit of their past services for computing their qualifying services for promotion under the time bound promotion statutes. Once the services of the petitioners working as temporary Lecturers shall



be counted for the purposes of seniority, promotion and other benefits, this Court does not find any reason as to why their services be not counted for the purposes of pension.

19. It would also be pertinent to observe that the State Government vide its letter no. 906 dated 16.07.1982 made it clear that those temporary teachers, whose services have already got recognition or shall be extended in future, they shall be given the benefit of Seniority-cum-Pay Increment with effect from the date of the initial appointment in the concerned College/University.

20. The aforesaid decision of the Government also came up for consideration in **C.W.J.C. No. 5859 of 1996 (B R Ambedkar, Bihar University Teachers Association v. State of Bihar and Others)**, wherein the learned Court in its decision dated 04.03.1998 observed that the Government having taken the decision in 1982 cannot be allowed, after more than 15 years to raise this objection and to rely upon the provision of the statute in support of his objection. The learned Court finally held that the concerned teachers are entitled to annual increments in terms of the Government decision as contained in letter dated 16.07.1982 and in terms of Clause 4 of the 1986 Absorption Statute. The learned Court also held that the



temporary Lecturers, whose services were regularized will be entitled to the benefit of their part services for computing their qualifying service for promotion under the time bound promotion statute.

21. What is required to qualify a government servant to get pension has been duly prescribed under rule 58 of the Rules, 1950. Rule 58 clearly stipulates that the service must be under the government and the employment must be substantive and permanent. It also requires that the service must be paid by the government. Further, rule 59 of the Rules, 1950 provides that in certain cases even though the conditions are not fulfilled, the government may provide that the service rendered by a government servant shall count for pension.

22. The services of the petitioners working on temporary basis for over a period of more than a decade and two, if are not computed for pension, it shall certainly cause undue hardship and irreparable loss. Thus, in the opinion of this Court, non-consideration of their past services rendered on temporary basis, are not sustainable and fit to be rejected.

23. The respondent authorities are hereby directed to fix the pension of the petitioners by treating their past services continue with effect from the date of their initial appointment to



the date of their retirement and ensure all the consequential benefit(s), preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

24. The writ petitions stand allowed.

**(Harish Kumar, J)**

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<b>AFR/NAFR</b>	NAFR
<b>CAV DATE</b>	NA
<b>Uploading Date</b>	28-11-2024
<b>Transmission Date</b>	

