

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16104 of 2024

Suray Deo Paswan S/O Ramnath Paswan Resident of Pathak Bigha Road,
Madanpur, P.S- Madanpur, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Education, New Secretariat, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Education, Government of Bihar, New Secretariat, Patna
3. The Director, Higher Education, Department of Education, Government of Bihar, New Secretariat, Patna.
4. The Authorised Officer, Pay Verification Cell, Department of Education, Government of Bihar, Patna having its Office at B.S.T.B.P. Corporation, Buddha Marg, Patna.
5. The Magadh University, Bodh Gaya through its Registrar.
6. The Vice Chancellor, Magadh University, Bodh Gaya.
7. The Registrar, Magadh University, Bodh Gaya.
8. The Finance Officer, Magadh University, Bodh Gaya.
9. The Nodal Officer/Admin, Pay Verification, Magadh University, Bodh Gaya.
10. The In-charge, Pay Verification, Magadh University, Bodh Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anil Singh, Adv
Mr.Ritesh Kumar, Adv
For the State : Mr. Kameshwar Pd. Gupta, GP 10
Mr. Satya Vrat, AC to GP-10
For the University : Mr. Pankaj Kumar Singh, Adv

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 13-11-2024

1. Heard learned counsel for the petitioner, learned AC to GP-10 and learned counsel appearing on behalf of the Magadh University.

2. The instant writ application has been filed seeking



quashing of the letter No. 15/M 1-73/2022-2792 dated 22-7-2023 issued by the Director, Higher Education, Department of Education, Government of Bihar (Annexure-16) addressed to the In-charge Officer, Pay Verification Cell, Department of Education, based on which pay verification certificate No. 1711220100242 has been issued by the authorised officer, Pay Verification Cell (Annexure-14), whereby basic pay of the petitioner as on 1-1-2016 has been fixed at Rs. 44100 instead of Rs. 49600, in complete breach of the Principle of Natural Justice and in violation of the order passed by the Hon'ble Supreme Court in Civil Appeal No. 516 of 2013 (State of Bihar and Ors vs. Sunny Prakash & Ors.), on the ground that despite opportunity of rectification of the objection being given to the University, by the pay verification cell, the objection is not being rectified resulting in delay in pay fixation, hence pay verification cell has been directed to issue pay verification certificate unilaterally. Further to quash the pay verification certificate No. 1711220100242 (Annexure-14), whereby basic pay of the petitioner has been reduced and the petitioner has been designated as Compounder and to direct the respondents not to interfere with the pay verification done by the Statutory Pay Fixation Committee of the University and to restore the pay



scale and designation of the petitioner, fixed by the University, since the same is in consonance with the direction of Hon'ble Supreme Court in Civil Appeal No. 516 of 2013 and to pay the withheld consequential benefit on account of non-issuance of pay verification certificate, by the pay verification cell, Department of Education, Government of Bihar.

3. Learned counsel appearing on behalf of the petitioner, Shri. Anil Singh, submits that before making submission on merits, it is pertinent to state certain relevant facts which have bearing on adjudication of the instant case. It is submitted that petitioner is a non-teaching employee of the University and was appointed on the vacant post of Dresser in Magadh University, Medical Centre vide order dated 12-9-1985 (Annexure-1) issued by the Registrar of the University, on temporary basis in the pay scale of Rs. 2535-10-645-15-E.V. 15-765 @ Rs. 535, the petitioner joined on 13-9-1985, further the service of the petitioner as Dresser was confirmed vide memo dated 25-1-1993 (Annexure-2) issued by the Registrar of the University with effect from 12-9-1985.

4. The learned counsel submits that there was no service condition in the University for the non-teaching employees of the University and its constituent colleges in the



State of Bihar and they use to be governed by Circulars/Office Orders issued from time to time by the State Government or Vice-Chancellor. The Vice-Chancellor was their appointing authority, on account of the fact that there was no service condition of non-teaching employees, strikes became frequent, which led the Department of Education, Government of Bihar to declare the non-teaching staffs of the University and its constituent colleges, equivalent to State Government staff vide order dated 25-2-1987, thereafter an agreement was entered in between the Federation of the University Employees and the State of Bihar on 16-7-2003, with regard to parity between the employees of the constituent colleges of the University and the State Government, further the State of Bihar on 21-7-2003 sent the said agreement dated 16-7-2003 to all the Vice-Chancellors of the University for necessary action, since the agreement dated 16-7-2003 was not being implemented by the University, as such the non-teaching staffs went on strike in 2005 and 2007. In pursuance of the strike of 2007, an understanding was arrived at with the State Government on 18-7-2007 for consideration of the demand of the Federation. In pursuance whereof, the State Government issued a letter dated 19-7-2007 for implementation of the agreement and the strike was called off.



5. The learned counsel submits that the agreement was not implemented, which led to an indefinite strike by the Federation of the University Employees in July 2008. Since the work and teaching in the colleges was badly hampered on account of the strike, hence a student, namely Sunny Prakash, on 14-7-2008 wrote a letter to the Hon'ble Chief Justice of the Patna High Court to end the strike, the letter was treated as PIL, thereafter an intervention application was filed by the Federation in the PIL and the Hon'ble Division Bench, after hearing the parties by its order dated 7-8-2008, directed the Chief Secretary, Government of Bihar to ensure that the commitment given by the State of Bihar, to the Federation, which has been reduced in writing on 18-7-2007, is honored and implemented within a month and the strike was called off.

6. It is next submitted that the State of Bihar, instead of implementing the agreement, filed an SLP (C) No. 22617 of 2008 against the order dated 7-8-2008 passed by the Hon'ble Division Bench, Patna High Court. The SLP was numbered as Civil Appeal No. 516 of 2013 and the same was dismissed by a detailed order dated 18-1-2013 and the State of Bihar was directed to implement the order dated 7-8-2008 passed by the Hon'ble Division Bench, Patna High Court reported in *2013 (1)*



PLJR (SC) 233.

7. It is submitted that the Federation filed contempt petition No. 262 of 2013 before the Hon'ble Supreme Court for initiating a proceeding of contempt against the State of Bihar for non-compliance of the order dated 18-1-2013 in Civil Appeal No. 516 of 2013.

8. It is next submitted that during pendency of the contempt petition before the Hon'ble Supreme Court, letter dated 20-6-2014 (Annexure-7) was issued by the Joint Secretary, Department of Education, Government of Bihar, wherein it was recorded that a decision had been taken to grant the pay scale of Rs. 4000-6000 to the Library Assistant, Sorter Correspondence Clerk and Routine Clerk in accordance with the law and to employees working regularly in the University and their constituent colleges with effect from 1-4-1997. Similarly, letter dated 23-6-2014, (Annexure-7/1) issued by the Joint Secretary, Education, Government of Bihar, a decision was taken to grant pay scale of Rs. 5500-9000 to Assistant, appointed in accordance with law and working regularly in the University and its constituent colleges with effect from 1-4-1997.

9. Further, the service condition of the non-teaching



employees working in different universities and its constituent colleges were framed on proposal given by the State Government and after approval of the Hon'ble Chancellor, the same was notified by memo No. B.S.U 41/2013-429 G.S (1) dated 4-3-2014, issued under the signature of the Principal Secretary to the Hon'ble Chancellor, University of Bihar.

10. It is submitted that the contempt petition pending before the Hon'ble Supreme Court was disposed of by an order dated 11-8-2017 (Annexure-10) in view of the affidavit filed by the State of Bihar.

11. It is submitted that the issue involved in the present petition be appreciated in the aforesaid background.

12. It is next submitted that after the service of the petitioner was confirmed, it was notified by letter dated 19-9-2005 (Annexure-3) issued by the Finance Officer, Magadh University, that 52 non-teaching employees have been given the benefit of time-bound promotion, vide the University letter dated 5-1-2002, as such, provisional pay fixation after giving the benefit of time-bound promotion has been done and the same will be finally accepted after approval of the State Government and the basic pay of the petitioner was fixed at Rs.1470 in the pay band of Rs.1200-1800 with the effect from



1-1-1996.

13. It is next submitted that vide letter dated 19-4-2006 (Annexure-4) issued by the Director, Higher Education, addressed to all the Registrars of the University, it was directed that pay fixation of University employees be done by the Committee constituted in view of statute No. BSU/25/84-3965 GS (1), dated 20-12-1986, wherein there is a provision for constitution of a Committee under the chairmanship of the Vice-Chancellor of the University for determination of seniority and pay fixation, further the pay fixation so done by the Committee in future be not sent to the Department of Education.

14. It is next submitted that the basic pay of the petitioner was fixed at Rs. 4000 in the pay band of Rs.2650-4000 with effect from 1-1-1996 and the same was revised to Rs.4440-7440 with grade pay of Rs.1650 and the pay of the petitioner was fixed at Rs.9780 with effect from 1-1-2006, as would manifest from letter dated 3-6-2006 (annexure-5) issued by the Finance Officer of the University, intimating that in view of Government letter dated 12-10-2001, the pay fixation of the teaching and non-teaching employees in the new pay scale with effect from 1-1-1996 has been approved by the Appointment, Approval, Seniority and Pay Fixation Committee. It is next



submitted that the petitioner thereafter vide notification dated 12-1-2012 (Annexure-6) was promoted to the post of Dispenser from the post of Dresser.

15. It is next submitted that after the service condition of the non-teaching employees of the University and its constituent colleges was notified on 4-3-2014, the Department of Education, Government of Bihar, constituted a pay verification cell for verification of the pay scale of teaching and non-teaching employees of the University and its constituent colleges.

16. It is submitted that the pay verification cell unilaterally started fixing pay scale as per their whims and fancies, which led to filing of writ petitions. It is submitted that Hon'ble single Judge in CWJC No. 7636 of 2014 held that objection of the pay verification cell cannot have the effect of washing the previous notifications issued by the University unilaterally, nor can such objection have effect of modifying the previous notifications issued in favor of the petitioner, such objection shall be treated as audit objection for which notices would be required to be given to the University concerned, which in turn will issue notice to the affected employees seeking their response and the University thereafter shall revert to the



pay verification cell, if the response of the University or the employee concerned is not found to be satisfactory, the state government can issue appropriate direction to the University to issue appropriate corrigendum within the time fixed, as the verification cell does not have any power, thus held by order dated 15-1-2015 (Annexure-8) that decision of pay verification cell was passed in violation of the principles of natural justice and the decision was set aside.

17. The learned counsel submits that thereafter letter dated 19-8-2016 (Annexure-9) was issued by the Joint Secretary, Department of Education, Government of Bihar, addressed to all the Registrars of the University, communicating that the Assistant who possessed the requisite qualification and have been appointed in accordance with law against vacant and sanctioned post and are working continuously in the University and its constituent colleges are given the benefit of unrevised pay scale of Rs. 5500-9000 with effect from 1-1-1996 and the monetary benefit would be payable with effect from 1-4-1997, similarly letter dated 29-8-2016 (Annexure-9/1) was issued by the Joint Secretary, Department of Education, Government of Bihar with regard to Library Assistant, Sorters, Correspondence Clerk and Routine Clerk that they are being given the benefit of



unrevised pay scale of Rs. 4000-6000 with effect from 1-1-1996 and the monetary benefit would be payable from 1-4-1997.

18. The University in compliance thereof accorded approval vide letter dated 25-9-2016 (Annexure-9/2) issued by the Registrar, Magadh University and the pay scale of Rs. 5500-9000 was granted to the Assistant, i.e., unrevised pay scale of Rs. 4000-6000 was revised.

19. The learned counsel submits that thereafter the pay of the petitioner with effect from 1-1-2016 was fixed in the pay scale of Rs. 29200-92300 at Rs. 49600. The said pay fixation was done with a caveat that if pay fixation on account of human error, has been done on the higher side, in that event, the same will be brought to the notice of the office of the Registrar so that the said error can be rectified in accordance with law, as would manifest from letter dated 4-11-2020 (Annexure-12) issued by the Registrar, Magadh University.

20. The learned counsel submits that in view of the facts recorded hereinabove, it is clear that the petitioner was appointed as a Dresser on 12-9-1985, thereafter was promoted to the post of Dispenser with effect from 15-11-2011 and his pay fixation was done by the statutory pay fixation committee of the University in the scale of Dispenser from due date and his pay



was fixed at Rs. 49600 with effect from 1-1-2016, with the aforesaid caveat, but the pay verification cell of the education department government of Bihar fixed the basic pay of the petitioner as on 1-1-2016 at Rs. 44100 and also designated the petitioner as Compounder instead of Dispenser. It is submitted that the pay verification cell unilaterally scaled down the pay of the petitioner to Rs. 44100 from Rs. 49600 with effect from 1-1-2016, in complete breach of the order dated 15-1-2015 in CWJC No. 7636 of 2014 (Annexure-8), i.e., the decision to lower down the pay scale of the petitioner was taken behind his back, as the petitioner was never noticed.

21. It is also submitted that in earlier round of litigation this court in CWJC No. 7636 of 2014 had held that pay verification cell does not have the power to amend the earlier decision of the University, rather the University has to be noticed and the University in turn will notice the affected employee and after considering the reply, if pay verification cell is not satisfied in that event University will be asked to issue corrigendum, i.e., pay verification cell on its own cannot fiddle with the pay scale of the employees.

22. Learned counsel submits that from perusal of the order impugned dated 22-7-2023 issued by the Director, Higher



Education, Department of Education, Government of Bihar Patna addressed to the In-charge officer, pay verification cell, Department of Education, it would manifest that an unilateral direction was given to the pay verification cell to issue pay verification certificate unilaterally as the objection given to the University by the pay verification cell is not being rectified, which is resulting in delay in pay fixation.

23. The learned counsel submits that the order impugned cannot be sustained for the reason that no doubt the pay verification cell had issued objection to the University for rectifying the pay scale of the petitioner but then the petitioner never received any notice from the University seeking his explanation nor the University ever reverted back to the pay verification cell in pursuance of the objection raised, as such, there was no material before the pay verification cell to arrive at a conclusion that the decision taken by them to scale down the pay scale of the petitioner was correct in absence of any explanation either from the petitioner or the University.

24. The learned counsel further submits that it absolutely does not stand to reason that as to why the Director, Higher Education was in a hurry to direct the pay verification cell to issue pay verification certificate unilaterally merely



because there was some delay in pay fixation.

25. It is submitted that it is settled principles of law that if by a decision some civil consequences follow in that event the aggrieved must be heard and in the present case there was a specific direction of this court in earlier round of litigation as recorded hereinabove that the pay verification cell cannot take a decision unilaterally with regard to scaling down of the pay scale of an employee of the University.

26. The learned counsel appearing on behalf of the State seeks time for filing a counter affidavit, on which the learned counsel appearing on behalf of the petitioner submits that there is a concept of *res ipsa loquitur*, which means that thing speaks for itself and from perusal of the order impugned, it would manifest that the same was passed in complete breach of the order dated 15-1-2015 in CWJC No. 7636 of 2014. It is also submitted that in view of the facts recorded hereinabove, it becomes manifestly clear that petitioner was never noticed nor any explanation was sought from him prior to scaling down his scale as such an order passed in complete breach of the principles of natural justice cannot be sustained.

27. The court is in complete agreement with the submissions made by the learned counsel appearing on behalf of



the petitioner as such the order impugned dated 22-7-2023 (Annexure-16) along with the pay verification certificate issued vide receipt No. 1711220100242 issued under the signature of the authorized officer, Pay Verification Cell, Department of Education Government of Bihar, Patna (Annexure-p/14) are hereby quashed and the matter is remanded back to the State authorities for proceeding afresh in accordance with law.

(Satyavrat Verma, J)

SUMIT/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	13-11-2024
Transmission Date	

