

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9783 of 2013

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1. Birendra Kumar Gupta Son Of Late Shankar Lall Resident Of C/O Shankar Bhusnalaya, Bakarganj, District - Patna
 2. Dr. Pawan Kumar Mishra Son Of Late Bindeshwar Mishra Resident Of Village + P.O. - Bishnupur Bathua, P.S. - Pusa, District - Samastipur
 3. Salim Jawed Son Of Shri Seikh Mukhtar Miyan Resident Of Village - Paighamberpur, Post - Siwan, P.S. - Hussainganj, District - Siwan
 4. Dr. Vani Bhushan Son Of Shri R.S.P. Chaudhary Resident Of Village - Manikpur, Mushahernia, P.O. - Andauli, P.S. - Parihar, District - Sitamarhi
 5. Dr. Yogendra Kumar Verma Son Of Shri Baliram Prasad Resident Of Mohalla - Shiv Nagar, P.O. - Hilsa, P.S. - Hilsa, District - Nalanda
 6. Shiy Shankar Singh Son Of Shri Narayan Prasad Singh Resident Of Village + P.O.- Amaon, P.S. - Chainpur, District - Kaimur

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Education Department, Bihar, Patna
2. The Patna University, Patna Through Its Registrar
3. The Vice Chancellor, Patna University, Patna
4. The Registrar, Patna University, Patna

.... Respondent/s

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Appearance :

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|----------------------|---|---------------------------------------------------------|
| For the Petitioner/s | : | Mr. Abhinav Srivastava,
Mr. Raushan, Advocates. |
| For the State | : | Mr. Vivek Prasad, G.P.7
Ms. Manisha Singh AC to GP.7 |
| For Patna University | : | Mr. Digvijoy Singh,
Mr. B.T. Jha, Advocates. |

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 04-08-2016


Heard learned counsel for the petitioners and learned counsel for the State as well as Patna University.

In the present writ petition, petitioners are challenging the notification contained in memo no.1210 dated 10.9.2012 issued by the Patna University, Patna in identical terms of notification the Government of Bihar vide its resolution dated 31.8.2005



issued by the Finance Department directed that the persons who have been appointed on or after 1.9.2005 in the services of the University are to be covered by the provisions of the Contributory Pension Scheme, 2005. The impugned notification has been issued in pursuance of the letter of the Government of Bihar vide resolution no. 53/04-1964 dated 31.8.2005 whereby New Contributory Pension Scheme has been made effective from 1.9.2005.

Primary question has been raised by the petitioners that they are teachers of the Patna University, are covered by the Patna University Act and Statute framed thereunder. In terms of the Statute the teachers of the Patna University are covered under scheme-cum- gratuity scheme, not according to newly amended pension scheme. In exercise of Section 36(3) of the Patna University Act, the statute has been framed is known as procedural instruction regarding sanction and payment of retirement benefit admissible under the Statute for the grant of retirement benefit to the employees of the Patna University. There is no amendment in the pension scheme, alike to the newly framed scheme of the State Government which is in the nature of Contributory Pension Scheme which has been made effective from 1.9.2005. The employees of the University cannot be treated to be at par with the employees of the State



Government. The employees of University are governed by the Statute not governed by the Rule and Regulation framed by the State for its employees. The State Government employees are governed by its own service condition and rule whereas employees of the teaching and non-teaching staff of the University are governed by the University Act as well as Statute framed under the University Act. Any amendment made to the pension or any statutory provision framed by the State Government ipso facto will not be applicable or enforced upon the teaching and non-teaching employees of the University unless a corresponding amendment is made to the Statute.

Admittedly in the present case though there is an amendment in the Pension Scheme of the State Government but no corresponding amendment has been made to the Statute.

Learned counsel for the State has placed reliance on the procedural instruction regarding sanction and payment of retirement benefits admissible under the Statutes for the grant of retirements benefits to the employees of Patna University where Regulation 24 makes it clear that it is subject to the provisions of the retirement benefit statutes, meaning thereby the Statute will prevail on this Regulation. Even if Regulation provides something and corresponding amendment has not been made in the Statute the benefit available to the teachers cannot be

curtailed or amended without making any corresponding amendment.

In such view of the matter, the impugned notification which is based on the letter of the State Government dated 31.8.2005 cannot be a basis for holding teaching and non-teaching staff of the University will be covered by the Contributory Pension Scheme with effect from 1.9.2005 in view of absence of corresponding amendment and in such view of the matter the notification dated 8.9.2012/10.9.2012 has no statutory backing and it is de horse to the provision of statute.

In this view of the matter notification dated 10.9.2012 is hereby quashed and this writ petition is allowed.

It goes without saying that the employees will be governed by the old pension scheme and it will not, any way, affect their right by the impugned notification.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.8.2016
Transmission Date	NA