

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19531 of 2021

=====

Smt. Kanchan Sah, Wife of late Dr. Nand Lal Sah, Resident of Purab Tola,
(Durga Asthan), P.O. and P.S.- Kahalgaon, District- Bhagalpur- 813203.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
2. T.M. Bhagalpur University through its Registrar.
3. The Registrar, T.M. Bhagalpur University, Bhagalpur.
4. The Vice Chancellor, T.M. Bhagalpur University, Bhagalpur.
5. The Finance Officer, T.M. Bhagalpur University, Bhagalpur.
6. The Principal, S.S.V. College, Kahalgaon.
7. The Director, Higher Education Department, Govt. of Bihar, Patna.
8. The In Charge Pay Verification Cell, Education Department, Govt. of Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Advocate
		Mr. Saroj Kumar, Advocate
For the State	:	Mr. Rajeev Ranjan, AC to GP- 20
For the University	:	Mr. Ashar Mustafa, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 27-02-2025

Heard Mr. Shivendra Kishore, learned Senior Advocate for the petitioner, Mr. Ashhar Mustafa, learned Advocate for the Tilka Manjhi Bhagalpur University, Bhagalpur (hereinafter referred to as 'the TMB University'). The State is represented by Mr. Rajeev Ranjan, learned Advocate.

2. The husband of the petitioner died in harness on 09.02.2005, while posted as University Professor and Head of the Department of Botany from S.S.V. College, Kahalgaon



under TMB University.

3. The petitioner having qualification of M.A. in Political Science, applied for her appointment on compassionate basis; accordingly on recommendation of Compassionate Committee, the petitioner was appointed on Class-III post in the pay scale of Rs.1200-1800/- vide Office Order No. 63 of 2005 dated 14.04.2005. The pay scale of the petitioner was further revised in the pay scale of Rs.4000-6000/- (Grade Pay Rs.2400/-) in fifth Pay Revision Commission (in brevity 'PRC'). Later on, the said pay scale of Rs.4000-6000/- was further revised in the pay scale of Rs.5200-20,200/- w.e.f. 01.01.2006 in 6th PRC. Further vide Office Order No. 366/2015 of TMB University, the petitioner was allowed the benefit of 1st MACP w.e.f. 14.04.2015, however, the petitioner was not paid the financial benefit thereof till date.

4. On 31.01.2019, the petitioner stood retired on attaining the age of 62 years. Notwithstanding the unblemished service and upon her superannuation, the University has sanctioned 90% pension to the petitioner along with admissible dearness relief w.e.f. February, 2019. Simultaneously, the Registrar of the TMB University vide letter no. 6823 dated 30.01.2019 determined and sanctioned gratuity amounting to



Rs.2,51,722/- and ordered to pay 90% thereto.

5. It is the contention of the petitioner that there was no departmental proceeding/criminal case pending against her, nonetheless 10% of pension and gratuity were withheld. It is also contended that from July, 2016, the benefit of 7th PRC was made admissible to the teaching and non-teaching employees of the University, including the TMB University and in terms thereof, the salary of the petitioner was to be fixed at Rs.40,400/- as on July, 2016 and on the date of retirement as on 31.01.2019, the petitioner was entitled to be paid at Rs.48,672/-, however, she was actually paid Rs.38,647/- in 6th PRC.

6. On being aggrieved by the inaction of the respondent authorities of the TMB University in not according the rightful due claim of the petitioner, viz, pre and post retiral benefits she preferred the present writ petition, inter alia, for the following reliefs:

“(i) For issuance of an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to revise pension, gratuity and leave encashment amount consequent upon fixation of pay of the petitioner in 7th Pay Revision w.e.f. July 2016.

(ii) For a direction on the respondents to pay difference of salary w.e.f. July



2016 till the date of retirement i.e. 31.01.2019 in 7th PRC.

(iii) For a direction to the respondents to pay difference of arrear of salary in 6th PRC we.f 01.01.2006 to June 2016.

(iv) For a direction on the respondents to pay difference of pension, gratuity, and leave encashment amount on account of fixation of pay in 7th PRC and for payment of difference thereto.

(v) For a direction on the respondents to pay statutory and delayed interest on all the aforesaid heads.”

7. It would be worthwhile to mention that during the pendency of the writ petition, the petitioner has been paid arrears of difference of 90% pension in 7th PRC as well as 90% of gratuity. The petitioner has also been accorded remaining 90% amount of leave encashment in 7th PRC, however, the remaining grievance of the petitioner quoted hereinbelow could not be redressed:

“(i) Difference of arrear of salary in 6th PRC to the tune of Rs.2,14,234/-.

(ii) Difference of pay by allowing benefit of 1st MACP w.e.f. 20.08.2015 to 31.01.2019.

(iii) Fixation of pay in 7th PRC and difference of arrear of salary thereto for the



period w.e.f. July 2016 until January 2019 to the tune of Rs.3,54,203/-

(iv) Revision of pension, gratuity and leave encashment amount in 7th PRC and difference of amount to the extent of 100 per cent.”

8. Learned Senior Advocate representing the petitioner has contended that admittedly the pay of the petitioner was fixed in the pay scale of Rs.4000-6000/- by the statutory committee of the University, which was approved and accorded by the Education Department vide its letter no. 1163 dated 20.05.2014. However, after nine years of such letter, the petitioner came to learn that the Director, Higher Education, Government of Bihar vide its letter no. 2792 dated 22.07.2023 directed the Incharge, Pay Verification Cell, Education Department, Government of Bihar to issue amended verified Pay Slip on the basis of details provided on portal. The decision of the Director, Higher Education also had approval of Additional Chief Secretary of the Education Department, Government of Bihar. In pursuant to the letter, aforementioned, the Pay Verification Cell has issued consequential modified Pay Slip fixing the Pay of the petitioner at Rs.3050 – 4500/- as on 20.08.2005 and at Rs.30,200/- as on 31.01.2019.

9. Consequent to the verified pay slip, fresh



calculation of arrears of salary has been made at the level of the University and it has been found that a sum of Rs.4,71,409/- has been paid to the petitioner in advance, for which the University is under process of recovery of the alleged excess payment to the petitioner.

10. The petitioner, on being aggrieved, preferred an interlocutory application, bearing I.A. No. 1 of 2024 and challenged the letter no. 2792 dated 22.07.2023 as well as consequential verified Pay Slip. The interlocutory application stood allowed by this Court vide order dated 28.03.2024 giving liberty to the respondent to respond.

11. Learned Senior Advocate while assailing the impugned orders and the action of the respondent authorities of the State as well as University has vehemently contended that fixation of the pay scale of the Universities employees was being done by the statutory committee, known as Approval, Seniority and Pay Fixation Committee. The power of Pay Fixation of the employees of the University lies with the Pay Fixation Committee and the Department is not concerned in this regard is admitted by the State Authority. The Pay Fixation made by the Pay Fixation Committee of the University are only audited by the State Auditor and in view of the valid objection



of State Auditor, the University makes its correction accordingly. In this regard, a letter no. 586 dated 19.04.2006, issued under the Signature of Director, Human Resources Development Department (Higher Education), Government of Bihar has been referred. In the light of the decision of this Court in C.W.J.C. No. 7636 of 2014, the Joint Secretary, Education Department vide its letter no. 1448 dated 24.07.2015, clarifying the role of Pay Verification Cell stated that the Pay Verification Cell will raise only objection, but cannot fix the pay scale unilaterally; it is the University, who has to entertain the objection and then within time frame, the University to issue direction regarding pay fixation.

12. Referring to the various decisions rendered by this Court, copies of which are marked as Annexures- P/17 and P/20 Series, it is strenuously argued that this Court has already held that Pay Verification Cell can only make audit objection and it is only the Pay Fixation Committee of the University, which has authority to fix the pay scale of its employees. Reliance has also been placed on the decision of the Hon'ble Supreme Court in the case of **State of Bihar & Anr. Vs. Sunny Prakash & Ors.**, reported in **(2013) 3 SCC 559** wherein the Hon'ble Court directed the State Government to implement the



commitment given by it on 18.07.2007.

13. Learned Senior Advocate after taking this Court through the decision of the Apex Court in the case of **Sunny Prakash** (supra) has contended that in compliance with the decision aforesaid, the respondent State issued notification no. 1163 dated 20.06.2014 and notification no. 1192 dated 23.06.2024 by which Universities were directed to fix the pay scale of non-teaching employees granting them the benefit of ACP/MACP, whereupon TMB University issued Office Order No. 211/2014 whereby pay in the scale of Rs.4000-6000/- was ordered to be implemented w.e.f. 01.04.1997 for the post of Library Assistant, Sorter, Correspondence Clerk and Routine Clerk. The pay of the petitioner was fixed by the University in the aforesaid premise by allowing the benefit of 1st MACP w.e.f. 14.04.2015 by the order dated 08.09.2015.

14. Learned Senior Advocate lastly contended that the impugned letter dated 22.07.2023 as well as Pay Slip are arbitrary, illegal, apart from in the teeth of the decision of the Hon'ble Apex Court and the letters issued by the Education Department, Government of Bihar and thus not sustainable in the eyes of law.

15. Reliance has also been placed on the decision of



this Court in the case of **Bimal Kumar Bimal Vs. The State of Bihar & Ors**, reported in **2024 (6) BLJ 521**.

16. Refuting the contentions raised hereinabove, learned Advocate for the State Mr. Rajeev Ranjan contended that after superannuation of the petitioner, the matter has been endorsed to duly constituted Pay Verification Cell for report with respect to admissibility of the pay scale of the petitioner. The Pay Verification Cell found that the petitioner was entitled to get pay scale of Rs.3050/- as on 20.08.2005 and in the pay scale of Rs.30200/- as on 31.01.2019.

17. Pursuant to the direction of this Court, a report with respect to issuance of the impugned Pay Slip was sought for and it has been opined that the petitioner was appointed in Class-III Grade on compassionate ground vide University Office order no. 63/2005 read with Memo No. 1082 dated 14.04.2005. In pursuant to the aforesaid order, the petitioner tendered her joining on 20.08.2005. Notification no. 429 dated 04.03.2014 issued by the Governor's Secretariat clearly explicit that after 20.12.2000, the posts of clerical cadre like Sorter, Library Clerk, Routine Clerk, Sore Keeper, Typist etc. has been made extinct and all these posts have been designated as Lower Division Clerk. The Senior Division clerk had been made the



promotional post. Any appointment was to be made on the post of Lower Division Clrk in the pay scale of Rs.3050-4590/- and in view thereof the very appointment of the petitioner was done against the post of Lower Division Clerk on the said pay scale. The relevant part of the notification dated 04.03.2014 has been placed on record as Annexure-R/A to the counter affidavit.

18. It is the contention of the State respondent that the Pay slip has been issued in the light of the provisions contained in the Statute issued vide Notification No. 429 dated 04.03.2014 by the Hon'ble Chancellor.

19. On behalf of TMB University, Mr. Ashhar Mustafa, learned Advocate, contended that the pension of the petitioner was revised with admissible benefits and the respondent University was paying provisional pension at the rate of Rs.12,272/- per month along with admissible allowances to the petitioner, which is 90% of Rs.13,635/-. The aforesaid payment of provisional pension was being paid subject to concurrence of Pay Fixation from Pay Verification Cell of the Government of Bihar. The respondent University further received a letter from Pay Verification Cell whereby the pay of the petitioner was fixed at Rs.3050/- as on 20.08.2005 and at Rs.30,200/- as on 2019. In terms of the Pay slip issued by the



Pay Verification Cell, the respondent University fixed the pension of the petitioner and found that an amount of Rs.4,71,409/- has been paid in excess to the petitioner.

20. This Court has given anxious consideration to the submissions advanced on behalf of the respective parties and also meticulously perused the materials available on record, including the various letters, notifications and the decisions rendered by this Court.

21. Before parting with the present case, it would be proper to discuss the power and role of the Pay Verification Cell under the Department of Education. The issue with regard to the authority and role of Pay Verification Cell has been considered on various occasions by this Court and held that in the matter of pay fixation, the Statutory Committee has exclusive jurisdiction. In the case of **Dr. Kedar Nath Pandey and Ors. Vs. The Magadh University, Bodhgaya and Ors. [2015 (1) PLJR 574]**, the Court held 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 employees. 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 has no jurisdiction in this regard. The aforementioned position has been admitted by the State and its authorities in its letter no. 1448 dated 24.07.2015.

22. The reliance of the petitioner on the decision of the Hon'ble Supreme Court in the case of **Sunny Prakash** (supra) finds substance. In the aforesaid case when the non-teaching employees of the Universities moved before this Court by filing Public Interest Litigation, bearing C.W.J.C. No. 10870 of 2008 seeking a direction upon the respondent State Government to ensure with the commitment given by the State Government to the Bihar State Universities and Colleges Employees Association is honoured and it is implemented.

23. The respondent State on being aggrieved by the



order of this Court preferred Civil Appeal No. 516 of 2013 (**State of Bihar & Anr. Vs. Sunny Prakash & Ors.**). The Hon'ble Supreme Court having considered the entire conspectus of the matter directed the State Government to implement the undertaking given by it on 18.07.2007.

24. Suffice it to observe that one of the demands, which was accepted by the State Government to be acted upon, was Library Assistant, Sorter, Routine Clerk, Correspondence clerk may be granted a pay scale of Rs. 4000-6000 at Departmental level. The Hon'ble Supreme Court while holding 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, has directed the State of Bihar to implement the impugned order of the High Court of Judicature at Patna dated 07.08.2008 within a period of three months. The appeal filed by the State of Bihar was thus dismissed with the direction.

25. The judgment of the Hon'ble Supreme Court in the case of **Sunny Prakash** (supra) is binding on the University as well State and in compliance with the aforesaid decision the respondent State also issued notification no. 1163 dated



20.06.2014 and notification no. 1192 dated 23.06.2024 by which the Universities were directed to fix the pay scale of non-teaching employees granting them the benefit of ACP/MACP. It is these letters, in the light of which TMB University issued Office Order No. 211/2014 vide Memo No. 2601 dated 14.07.2014, whereby pay in the scale of Rs.4000-6000/- was ordered to be implemented w.e.f. 01.04.1997 of the post of Library Assistant, Sorter, Correspondence Clerk and Routine Clerk.

26. It is admitted position that the pay of the petitioner was fixed by the University by allowing the benefit of 1st MACP w.e.f. 14.04.2015 vide order dated 08.09.2015.

27. Identical issue has raised before this Court in the case of **Indranath Jha Vs. The State of Bihar & Ors (C.W.J.C. No. 4722 of 2020)** wherein this Court placing reliance upon the decision of the Apex Court in the case of **Sunny Prakash** (supra) has allowed the writ petition and directed to adhere to the determination of the pay fixation made by the Statutory Committee of the University and further held that the University is obliged to grant all the benefits available to the petitioner in terms of the judgment of the Apex Court in **Sunny Prakash** case (supra) and ensure payment of entire dues



on the basis of pay fixation made in pursuant thereto.

28. In view of the discussions made hereinabove and the position obtaining in law, this Court finds that the impugned order as contained in letter no. 2792 dated 22.07.2023, as also the consequential verified pay slip issued by the Pay Verification Cell is unsustainable and is hereby set aside.

29. The writ petition stands allowed with a direction to the respondent State as well as University to ensure payment of all the admissible amount treating the petitioner to be appointed in the pay scale of Rs.4000-6000/-, preferably within a period of three months from today.

30. Suffice it to observe that the petitioner had already superannuated on 31.01.2019 and more than six years have elapsed, thus any delay in disbursing the admissible monetary benefit shall entail the petitioner to get 6% interest over the due amount.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.02.2025
Transmission Date	NA

