

**IN THE HIGH COURT OF JHARKHAND, RANCHI**

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**W.P.(S) No. 358 of 2017**

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Tapendra Yadav, son of late Nathuni Prasad Yadav, resident of Haider Ali Road, Kokar, PO-Kokar, PS-Sadar, District-Ranchi ..... Petitioner

-- Versus --

1.State of Jharkhand, through the Principal Secretary/Secretary, Higher, Technical Education and Skill Development Department, Government of Jharkhand, having his office at Project Building, PO and PS-Dhurwa, District-Ranchi

2.Prncipal Secretary/Secretary, Higher, Technical Education and Skill Development Department, Government of Jharkhand, having his office at Project Building, PO and PS-Dhurwa, District-Ranchi

3.The Directorate, Higher, Technical Education and Skill Development Department, Government of Jharkhand, having his office at Project Building, PO and PS-Dhurwa, District-Ranchi

4.Ranchi University, through its Registrar, having his office at Main Road, PO-GPO, PS-Kotwali, District-Ranchi

5.Vice Chancellor, Ranchi University, PO-GPO, PS-Kotwali, Ranchi

6.Ram Lakhan Singh Yadav College, through its Principal/Professor-Incharge, having its office at Ram Lakhan Singh Yadav College, Kokar, PO-Kokar, PS-Sadar, District-Ranchi ..... Respondents

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner :- Mr. Atanu Banerjee, Advocate

For the State :- Mr. Jagdeesh, AC to SC-I

For Ranchi University :- Mr. Anoop Kumar Mehta, Advocate

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**14/11.09.2020** Heard Mr. Atanu Banerjee, the learned counsel appearing on behalf of the petitioner, Mr. Jagdeesh, the learned AC to SC-I appearing on behalf of the respondent-State and Mr. Anoop Kumar Mehta, the learned counsel appearing on behalf of the respondent-Ranchi University.

2. This writ petition has been heard through Video

Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The petitioner has preferred this writ petition for direction upon the respondents to fix the pension of the petitioner on the basis of last pay drawn by the petitioner on the date of his superannuation on 31.08.2012 in the pay scale of Rs.5500-9000/- and subsequent to finalization/revision of the pension, the arrears of pension, gratuity accordingly.

4. Mr. Atanu Banerjee, the learned counsel appearing for the petitioner submits that the petitioner was temporarily appointed on the duly created and sanctioned post of Office Assistant in Ram Lakhan Singh Yadav College on 25.02.1973 in the substantive pay scale of Rs.220-4-240-EB-5-290-EB-315/-. Pursuant thereto the petitioner joined on the said post on 15.03.1973. The petitioner's service was confirmed on 07.11.1976. The service book of the petitioner was opened. The petitioner's date of annual increment fixed on 1<sup>st</sup> April of the particular year in view of Government of Bihar notification dated 27.01.1995 with regard to Ranchi University. The sanction was granted for central pay scale to IIIrd and IVth grade employees of the constituent colleges under the University. The pay of the petitioner was fixed in the revised pay scale of Rs.1500-2750 with effect from 01.01.1986. The office order dated 25.01.1995 issued by the University suggests that the sanctioned post in Ram Lakhan Singh Yadav College available prior to 01.08.1993. The pay scale of the petitioner fixed as per the Government letter no.841 dated 13.04.1981. Admittedly, the petitioner was getting the pay scale of Rs.1500-2750/- and thereafter pursuant to 5<sup>th</sup> Pay revision the pay scale of the petitioner was fixed at Rs.5500-9000/-. The petitioner retired on

31.08.2012 and after the retirement, the pension of the petitioner has been fixed taking into account the pay scale of Rs.4000-6000/-. Aggrieved with this, the petitioner has preferred this writ petition.

5. Mr. Banerjee, the learned counsel for the petitioner submits that the pay scale of the petitioner was fixed in the 4<sup>th</sup> pay revision in the pay scale of Rs.1500-2750/- and pursuant thereto the 5<sup>th</sup> pay revision the pay scale was fixed at Rs.5500-9000/- and the petitioner was receiving that amount and he retired on this pay scale. He further submits that the petitioner was working on the sanctioned post and in spite of that arbitrarily the pay scale of the petitioner has been down graded to Rs.4000-6000/- and the pension has been fixed. He further submits that there is no reason assigned as to what are the basis for coming to that pay scale.

6. Mr. Anoop Kumar Mehta, the learned counsel appearing on behalf of the respondent-Ranchi University submits that the University had provisionally fixed the salary of the petitioner in the pay scale of Rs.5500-9000/- w.e.f. 01.01.1996 in the 5<sup>th</sup> pay revision and the same has been sent to the Government. He further submits that by letter dated 02.06.2010, the State Government provisionally fixed the pay scale of non-teaching employees of Ram Lakhan Singh Yadav College, Ranchi. The salary of the petitioner has been fixed at Rs.4000-6000/- w.e.f. 01.01.1996 under the 5<sup>th</sup> Pay revision. As this amount has been approved by the State Government, the Ranchi University has notified this. The petitioner filed his objection regarding the pay scale approved by the State Government before the Ranchi University claiming the pay scale of Rs.5500-9000/- w.e.f. 01.01.1996 under the 5<sup>th</sup> pay revision. The same has been forwarded by the University to the Government by letter dated 06.06.2013. Mr. Mehta, the learned counsel draws the attention of the Court to the letter dated 06.06.2013 addressed to the Director (HRD).

Pursuant to the letter dated 05.06.2013, wherein at column no.5 the sanctioned post of the 3<sup>rd</sup> and 4<sup>th</sup> grade employees of Ram Lakhan Singh Yadav College is disclosed, the 3<sup>rd</sup> grade employees sanctioned post is disclosed as number of posts, 22. Mr. Mehta, the learned counsel further submits that in view of this the University has already forwarded the claim of the petitioner as it is in the domain of the Government to fix the salary of 5<sup>th</sup> pay revision of the petitioner.

7. Mr. Jagdeesh, the learned counsel appearing for the respondent State submits that in a meeting held on 18.04.2011, a decision was taken to identify the sanctioned posts based on the budget 1996-97 and he submits that in the said college, only 21 posts of class-III and 19 posts of class-IV have been established. By way of referring to the Annexure-A to the counter affidavit, he submits that the petitioner was working on the post of Cashier. In view of the salary received by the petitioner in paragraph no.15 of the said affidavit. It has been further stated that at the moment recommendation of the University will be received by the department, the claim of the petitioner will be scrutinized once again. By way of referring to the supplementary counter affidavit of the State, he submits that the petitioner was not working on the sanctioned post, only one sanctioned post of UDC(HC) is there and on that post one Ganga Prasad Yadav was working. He refers to the letter dated 10.02.2015 and submits that the case of the petitioner has already been considered and rejected.

8. Having heard the learned counsels appearing for the parties, the Court finds that in the supplementary counter affidavit, the letter dated 10.02.2015 suggests that in the said college, 22 sanctioned posts of 3<sup>rd</sup> grade employees are already there. This letter is with regard to the 6<sup>th</sup> pay revision whereas in the present case the controversy is with regard to 5<sup>th</sup> pay revision. The petitioner was retired on 31.08.2012

and in that view of the matter, this letter dated 10.02.2015 is not applicable in the facts and circumstances of the present case. Admittedly, the petitioner was working on the 3<sup>rd</sup> grade post and he was receiving the pay scale of Rs.5500-9000/-. Earlier he was getting the pay scale of Rs.1500-2750/-. On the basis of 4<sup>th</sup> pay revision, the replacement scale of the pay scale of 4<sup>th</sup> pay Rs.1500-2750/-, Rs.5500-9000/-. How the State has come to a conclusion that the petitioner will be entitled for Rs.4,000-6,000/-, which is not the replacement pay scale of the petitioner is not clear. The petitioner was not in the pay scale of Rs.1400-2300/-, replacement pay scale of which is Rs.4000-6000/-. Definitely the petitioner was getting the pay scale of Rs.1500-2750/-. The University has accepted this position that the petitioner was working on the sanctioned post. The letter dated 10.02.2015 suggests that the letter dated 10.02.2015 was brought by the State Government. By way of Annexure-'E' to the supplementary counter affidavit which suggests that number of sanctioned posts of 3<sup>rd</sup> grade employees are 22, whereas in the earlier counter affidavit, the State has stated that only 21 sanctioned posts of 3<sup>rd</sup> grade employees are therein Ram Lakhan Singh Yadav College. This statement of the State in the earlier counter affidavit and the letter dated 10.02.2015 is contradictory to each other. The University has also taken a stand that 22 sanctioned posts of 3<sup>rd</sup> grade employees are there. The State counsel has not been able to demonstrate what is the basis of coming to the pay scale of Rs.4,000-6,000/-. In view of this anomaly, it cannot be said that the petitioner was not working on the sanctioned post. The petitioner was also getting the pay scale of Rs.5500-9000/- at the time of retirement and accordingly, as a cumulative effect of the above discussion and in view of the finding that there is no post of Cashier of the petitioner at the pay scale of Rs.4000-6000/-, the letter dated 12.06.2010 cannot sustain in

the eye of law and accordingly, the impugned order dated 12.06.2010 is quashed.

9. The petitioner is entitled for the pay scale of Rs.5500-9000/- and the pension be fixed at the same pay scale which the petitioner was receiving on the date of retirement. The petitioner will be entitled for the consequential benefits.

10. The writ petition [W.P.(S) No.358 of 2017] stands allowed and disposed of.

**( Sanjay Kumar Dwivedi, J )**

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