

BIHAR HUMAN RIGHTS COMMISSION

9, Bailey Road, Patna

File Nos. BHRC/Comp. 151/13 & 1461/14

Cases of Amitabh Chandra & Prof. S. Narayan: (Case of payment of pension and other retiral benefits to the employees of A.N. Sinha Institute of Social Studies, Patna)

9.4.2015

These two matters are related. One of these files 151/13 is filed by son of a deceased pensioner who had not been paid his pension and pensionary benefits. Another petition came to be filed by Prof. S. Narayan (File No.1461/14) seeking a direction from the Commission to respondent Institute to pay applicants pension regularly. The A.N. Sinha Institute of Social Studies, Patna is a creation of an Act known as Anugrah Narayan Sinha Social Studies Act, 1964. A background note as produced by the petitioners and not disputed by the respondents is quoted below:-

“As per the Act, there is a Governing Body of the Institute in the name of Board of Control with its Chairman appointed by the Government of Bihar. The Principal Secretary, Department of Education, Government of Bihar, the Principal Secretary, Department of Finance, Government of Bihar and the Director of the Institute as the Member Secretary to the Board of Control are ex-officio members of the Board of Control in addition to the Vice-Chancellor, Patna University. There are twelve members in the Board of Control in all including nominees of the GoB, the ICSSR, New Delhi, UGC New Delhi, etc.

“The Institute has been financially supported with regular (annually) funding from the Government of Bihar as well as from the Indian Council of Social Science Research, New Delhi, separately under **non-plan head** as well as **plan head** for its establishment and

developmental expenditure in the form of annual grants. In addition to these regular grants received annually from the Government of Bihar and the ICSSR New Delhi, the Institute makes income from its own resources and services as well which include facility (including computer lab, meeting halls, hostel rooms, guest house, lawn, etc.) hiring charges, project overhead charges, savings from the project funds, etc. on regular basis.

“Retirement benefits come under service condition and are determined by the Board of Control of the Institute. What the BoC in matters pertaining to service conditions determines becomes statutory for the Institute. Till January 1985 the Institute had been paying three retirement benefits to its retired employees viz (i) General Provident Fund (GPF) contributed by the employee from the salary payment (ii) Gratuity as per the prevailing rule in the government and (iii) Contributory Provident Fund (CPF) @ 10% of the pay by the Institute/employer under the triple retirement benefit scheme. The CPF @ 10% of pay used to be contributed by the Institute (the employer) from the *Institute's resources* through the respective GPF accounts of the employees of the Institute towards payment of one of the three retirement benefits. This retirement benefit used to be withdrawn finally, only after the retirement/ leaving the Institute finally, by the Institute with earned interest thereon paid to the respective retired employee. The CPF amount used to be contributed from the annual non-plan grants received by the Institute (Institute's resources) from the funding agencies. The CPF contribution payment by the Institute was over and above the gross salary paid by the Institute to the employee. The other two retirement benefits **GPF** (employee contribution to Provident Fund account with interest) and **Gratuity** as admissible in addition to the **CPF** used to be paid on retirement. Accordingly, the employees of the Institute who retired from their regular services of the Institute till January 1985 have been paid GPF, Gratuity and CPF on retirement. In addition, they were also paid 'Leave Encashment' as per the rule of the Government of Bihar.

“The Board of Control of the Employer/ Institute had appointed a Committee to examine and study various options with triple retirement benefit scheme and to make recommendations for

consideration by the Board. The Committee, accordingly, submitted its report making recommendations on **11.02.1985** in the office chamber of the **Education Commissioner, Government of Bihar**, ex-officio member of the Board. The BoC in its meeting deliberated on the issue of various retirement benefit schemes for the employees of the Institute which were taken up at agenda number 7 in the name of *“To consider the report of Committee constituted for implementing the triple retirement benefit”*. The resolutions of the Board of Control pertaining to this agenda read as *“The Board accepted the recommendation of the Committee on Retirement Benefits dated 11.2.85 and decided that the scheme as prepared may be implemented, provided that the scheme as reported would be operated from **Institute’s resources** and that no separate grant would be sought for it from the government. The following resolutions for opening of accounts, as given in the committee’s report were passed.*

1. *“Resolved that retirement benefits for the employees of the A.N. Sinha Institute of Social Studies, Patna be adopted as per provision contained in the Retirement benefit statutes of Patna University subject to such conditions and changes as may be made by the Board of Control from time to time” It will take effect from 1.2.1985.*
2. *“Resolved further that as provided in the said statutes of Patna University the following accounts be opened with a scheduled Bank in respect of this Institute; to be operated jointly by the Director and Registrar of the Institute.*

The resolutions of the Board of Control were implemented by the Institute and accordingly, a separate account with the Indian Bank, Gandhi Maidan, Patna branch was opened and operated jointly by the Director and the Registrar of the Institute and has been under operation for transactions in relation to pension payments to the pensioners of the Institute. To this account the CPF contribution @ 10 per cent of the basic pay of the working employee (under the pension scheme) used to be and continued to be credited on regular basis simultaneously with releasing monthly salary payment. ***The Institute also withdrew back the amount it has contributed to the respective employees PF account, towards payment as CPF***

(one of the three retirement benefits under the triple retirement benefit scheme) operative till January 1985 with effect from the date of joining the services at the Institute together with earned interest thereon so far and transferred the same to the pension account operated by the Institute as the retired employees would be receiving pension and not the CPF after retirement with effect from 01.02.1985 as one of the retirement benefits. In addition, credits from other Institute's resources including internal resources like savings from the pension account by the Institute from time to time managing efficient payment of regular pension to its pensioners. Accordingly, the pensioners had been receiving their pension payments regularly till March 2014. After the order from the Hon'ble Chairman, Bihar State Human Rights Commission in the month of August 2013, the Institute had released pension for only one month – April 2014."

There were several representations and responses. At no point of time the Institute disputed the eligibility of the petitioners to receive the pension but at one point of time the Director of Higher Education and Department of Education submitted, though belatedly, that the employees of the Institute would not be entitled to pension and as it has never been sanctioned by the Government. There are three circumstances which make this argument fallacious:-

- (1) That there is a decision of the Institute as mentioned hereinabove taken on 11.2.1985 to the effect:-
- (2) *"Resolved that retirement benefits for the employees of the A.N. Sinha Institute of Social Studies, Patna be adopted as per provision contained in the Retirement benefit statutes of Patna University subject to such conditions and changes as may be made by the Board of Control from time to time" It will take effect from 1.2.1985.*
- (3) *"Resolved further that as provided in the said statutes of Patna University the following accounts be opened with a scheduled Bank in respect of this Institute; to be operated jointly by the Director and Registrar of the Institute."*

While this decision was taken by the Board of Control, the Principal Secretary, Department of Education, Principal Secretary, Department of Finance were present as Members of the Board and were signatories to the decision. This decision was taken in the meeting presided over by the then Education Commissioner, Mr. Arun Pathak. Now the same Education Department takes a stand that they were never in know of the fact that the petitioners are being paid pension. The Institute receives grants from the Government and the Institute informs government of the expenditure and always over years Government knew that retired employees were receiving pensions from grants made available by Government.

(i) that the employees of the Institute have been receiving pension from 1985 till April 2014 when the pension was stopped by the present Director. For a period of over 20 years no body disputed the right of pensioners to receive pension.

(ii) In File No.151 of 13 the Government passed a specific order which was communicated to the Commission by letter no.1057 dated 13.8.2014 by which the Director was asked to make payment of unpaid pension to the petitioner. Even at that time the Government did not take a stand that the employees of the Institute were not entitled to pension.

The Commission feels that this is not a service dispute as was tried to be raised by the Institute and the government as government as well as the Institute have all along maintained that the Institute is an instrumentality of State and as per terms of the resolution of 1985 the employees of the Institute are entitled to payment of pension. It is well settled that pension is a valuable right and cannot be defeated or stopped without an authority of law. A person who is aware of receiving pension after superannuation, basis his post retirement life on this fact and if at such a stage he is told, he was not entitled

to pension, the consequences can be imagined. At such stage of life when a human being is not in a position to earn for a living, refusal of pension would amount to worst possible violation of human rights. It will simply be a barbaric and inhuman act.

Since there is no dispute with respect to eligibility of the petitioners to receive their pension, I am of the opinion there is no service dispute at hand but a dispute of deprivation of valuable human right which is fundamental in nature.

Another aspect of the matter needs to be seen. The Chairman of the Board also decided sometimes back to adopt the recommendations of 6th Pay Commission for its employees. Although, the enhanced salary to the 6th Pay Commission were to be paid w.e.f. 1st April 2006 but because of scarcity of funds the Chairman decided to pay the arrears from a date which is not earliest in point of time but coincides with his own appointment. He deprived people to be paid their arrears from 2006 but disbursed arrears to himself.

The Director is powerful enough to extend benefits of Sixty Pay Commission to himself and for this purpose there is no dearth of funds – but he is not able to help pensioners.

In these circumstances, the Commission directs that the arrears of pension be paid to pensioners within a period of six weeks and thereafter the petitioners be paid their pension regularly every month.

Inform the Commission about compliance within eight weeks.

Copy of the order be given to the petitioners, the Principal Secretary, Education Department and Director Higher Education, the Director, A.N. Sinha Institute.

(Justice Bilal Nazki)
Chairperson