



CNR: KAHC010198792024

NC: 2026:KHC:38992-DB
WA No. 527 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

WRIT APPEAL NO. 527 OF 2024 (S-R)

BETWEEN:

MR. ZAKIR HUSSAIN,
AGED ABOUT 71 YEARS,
S/O.LATE MOHAMMED HUSSAIN,
ASSOCIATE PROFESSOR (RETD.),
DEPARTMENT OF URDU,
AL-AMEEN ARTS, SCIENCE AND
COMMERCE COLLEGE,
HOSUR ROAD,
BANGALORE - 560 027.
RESIDING AT NO.21,
1ST MAIN, 3RD CROSS,
BHUVANESHWARINAGAR,
R.T.NAGAR POST,
BANGALORE - 560 032.

...APPELLANT

(BY SRI. SRIKANTH, ADVOCATE FOR
SRI. PARTHASARATHI M.S., ADVOCATE)

AND:

1. THE COMMISSIONER FOR
COLLEGIATE EDUCATION,
PALACE ROAD,
BANGALORE - 560 001.



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2. THE REGIONAL JOINT DIRECTOR OF COLLEGIATE EDUCATION,
BANGALORE REGION,
BANGALORE - 560 009.
3. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
PALACE ROAD,
BANGALORE - 560 001.
4. AL-AMEEN EDUCATIONAL SOCIETY,
AL-AMEEN CAMPUS, HOSUR ROAD,
(NEAR LALBAGH MAIN GATE),
BANGALORE - 560 027.
REPRESENTED BY ITS
HONORARY SECRETARY.
5. THE PRINCIPAL GRADE-1,
AL-AMEEN ARTS SCIENCE
AND COMMERCE COLLEGE,
HOSUR ROAD,
BANGALORE - 560 027.
6. THE BENGALURU UNIVERSITY,
JNANA BHARATHI,
BENGALURU - 560 056.
REPRESENTED BY REGISTRAR.

...RESPONDENTS

(BY SRI.M.N. SUDEV HEGDE, AGA FOR R1 TO R3,
R4 AND R5 ARE SERVED AND UNREPRESENTED)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE PORTION OF THE ORDER OF THE LEARNED SINGLE JUDGE IN WP No. 13150/2013 DATED 19.12.2025 TO THE EXTENT OF THE PERMITTING THE STATE TO RECOVER A SUM OF



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Rs.2,13,768/- FROM THE PENSION AND RELATED BENEFITS OF THE APPELLANT AND ETC.,

THIS APPEAL, COMING ON FOR PRELIMINARY HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This intra Court appeal has been filed impugning the judgment and order dated 19.12.2023 passed by the Writ Court in W.P.No.13150/2013.

2. In the impugned judgment and order the Writ Court disposed of the writ petition, stating that the Government would not be entitled to any interest on the sum of Rs.2,13,768/- and consequently State shall make over the interest component to the petitioner and also stated that the petitioner is entitled to pension, arrears of pension and Death-cum-Retirement Gratuity apart from the commuted value of pension. Further, the State



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Government was directed to ensure that the amounts that are due to the petitioner, apart from a sum of Rs.2,13,768/- would be made over to him in a time bond manner.

3. The parties are referred to as per their ranking before the Writ Court.

4. Facts germane to file the present appeal are as under:

4.1 The petitioner was working as a lecturer in Urdu and was granted permission to pursue his higher studies in the field of Research leading to a Doctor of Philosophy (Ph.D) under the F.I.P Scheme. This permission granted enabled the petitioner to pursue his Ph.D Course and during this period he would continue to be paid his salary.

4.2 An agreement came to be executed by the petitioner on 29.03.1990, in this regard, whereby a term was stipulated that the petitioner should prosecute his



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studies diligently and in case he failed to fulfill the said condition, and if he failed to serve the Management for a period of five years after the completion of Ph.D degree, he would be liable to repay the amount of expenditure incurred by the Government on account of granting him deputation, with interest.

4.3 From 29.03.1990 to 29.03.1993, the petitioner was on deputation. He was pursuing his studies to secure the Ph.D, but he could not secure his Ph.D degree. Later on he rejoined the Institution on 12.07.1993 and continued to work in the Institution. It is not in dispute that petitioner had served the Institution till he attained the age of superannuation.

4.4 On 19.04.2006, the petitioner was issued show cause notice, calling upon him to show cause regarding non completion of his Ph.D course. The petitioner replied the same by his letter dated 22.09.2006, wherein he



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has taken a stand that despite repeated request for written examination and *viva voce* for his Ph.D degree, the same was not conducted and as a consequence the petitioner could not submit his thesis. However, no action came to be taken thereafter.

4.5 But on 11.08.2010, the Bangalore University informed the petitioner that his Ph.D registration itself was cancelled. The petitioner was issued yet another show cause notice dated 24.01.2012 to which, reply was submitted by the petitioner on 13.02.2012, wherein he has taken a stand that he could not be blamed for non completion of Ph.D course, because the written examination and *viva-voce* was not conducted, despite several requests in that regard.

4.6 On 30.04.2012, the petitioner was permitted to retire on attaining the age of superannuation. Subsequently



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the Director addressed a communication to Commissioner of Collegiate Education, contending that for the period of his deputation from 29.03.1990 to 29.03.1993, a total sum of Rs.2,13,768/- paid should be recovered from the terminal benefits along with interest.

4.7 Pursuant to the said letter, a communication was sent to the Principal of the College, calling upon the College to secure a consent letter from the petitioner for deduction of the amount stated afore. Aggrieved by the said communication the petitioner was before the Writ Court.

5. It was contented before the Writ Court that, the amount cannot be recovered, since the failure to secure Ph.D degree could not be attributable to the petitioner. It was further contended that he did pursued the course earnestly and he had complied with the terms of the Agreement and the Agreement did not contain the



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stipulation that he would necessarily secure Ph.D degree. He submitted that since the securing of Ph.D degree was not a mandatory or a compulsory obligation, the entire attempt to recover the salary paid during his deputation period since 1990-93 was illegal.

6. The attempt by the State Government to recover a sum of Rs.2,13,768/- nearly after twenty years was wholly unjustified, apart from being time-barred. Lastly it was contented that the State Government has withheld the entire benefits of several lakhs of rupees, though the claim was for a sum of Rs.2,13,768/-.

7. The Writ Court after considering the rival submissions of both the parties was of the opinion that the petitioner would have to, at least, bear the expenses of the Government incurred in this regard on his failure to secure his Ph.D degree and held that there is no fault found with the State demanding a sum of Rs.2,13,768/- from the retirement benefits. However, considering the



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fact that there is delay of nearly 19 years, the State Government would not be entitled for interest on the said amount.

8. With these reasons the Writ Court has concluded that the State Government is directed to release the retirement benefits after deducting a sum of Rs.2,13,768/- except the interest and also stated that the petitioner is entitled to pension, arrears of pension and Death-cum-Retirement Gratuity apart from commuted value of pension. This appeal is filed only to the extent of retaining a sum of Rs.2,13,768/- paid during the year 1990-93.

9. Heard, Sri.M.P.Srikanth, learned counsel for Sri.Parthasarathi.M.S, learned counsel for appellant and Sri.M.N.Sudev Hegde, learned Additional Government Advocate for respondent Nos.1 to 3. Respondent Nos.4 and 5 thought served unrepresented.



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10. Sri.M.P.Srikanth, on many folds contended that the amounts were paid for deputation period of 1990 to 1993, however, for the first time in 2006, a notice was issued which has been replied. Thereafter, in 2012 another notice was issued that was also replied suitably, stating that there was no fault attributable to the petitioner in not securing the Ph.D degree, as despite his request, the written examination and *viva-voce* were not conducted.

10.1 Thereafter, there was no proceedings from the Government and petitioner was permitted to retire and only after his retirement date, on the communication of Director to the Commissioner of Collegiate Education, withheld the entire terminal benefits of Rs.6,45,580/- was withheld for a sum of Rs.2,13,768/- and issued communication to accord sanction for recovery of the said amount along with interest. There is considerable delay of nearly two decades in recovering the amount. In that an eventuality, claim of the State is time-barred.



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10.2 Learned counsel further submits that though the Writ Court has considered the delay, however, has declined to come to the rescue of the petitioner in the action of State Government to recover the amount though opined that the State is not entitled for the interest. He further refers to the judgment of Supreme Court in ***STATE OF PUNJAB AND OTHERS Vs. RAFIQ MASIH (WHITE WASHER) AND OTHERS***¹ to contend that any amount paid during the service period cannot be recovered after retirement, when there is no fault attributable on the Government servant.

11. Sri.M.N.Sudev Hegde, argued in support of the judgment and order passed by the Writ Court.

12. We upon consideration of rival submissions are of the considered opinion that the Writ Court has extensively considered the entire case of petitioner in the

¹ (2015) 4 SCC 334



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writ petition. The amount was paid during the period he was on deputation while pursuing his studies to secure Ph.D degree. The amount paid amounts to an advantage secured during the period he was on deputation while pursuing his studies. However, he has not secured the Ph.D degree. The judgment of ***RAFIQ MASIH*** supra is not applicable to the facts of the case, wherein it is clearly stated that any excess amount paid in the absence of anything attributable towards the Government servant, the Government is estopped from recovering the same once it was paid under mistake. In the case on hand, admittedly, the petitioner was pursuing the studies i.e., Ph.D course and he was permitted to complete the course and granted three years time to complete the course, paid salary for the same period. Admittedly, he has not secured the Ph.D degree.

13. In that view of the matter the advantages which he has received for the purpose of securing the Ph.D degree during the course period, for which he was on



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deputation for a period of three years, he was under obligation to secure the same, however he failed. No person is permitted to make unjust enrichment, thereby cause loss to the State Ex-chequer. In that view of the matter, we after having considered the judgment of the Writ Court and are of the opinion that the Writ Court was very magnanimous in directing the State to recover the amount without interest and further held that the petitioner is entitled for pension, arrears of pension and Death-cum-Retirement Gratuity apart from the commuted value of pension.

14. In that view of the matter, we find no infirmities in the impugned judgment and order passed by the Writ Court. Accordingly, we ***dismiss*** this appeal.

15. However, the State Government is directed to comply the order of the Writ Court, within a period of one month from the date of receipt of copy of this order.



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16. The appellant is at liberty to produce the certified copy of this order before the concerned department for an early action.

17. In view of dismissal of Writ Appeal, pending interlocutory applications, if any, stand disposed of.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

RR
List No.: 1 Sl No.: 25
ct-vn