IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8463 of 2015

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1. Manju Lal W/o Late Sant Kumar Lal Resident of Mohalla - Saristabad, Patna, P.S. Gardanibagh, District - Patna
2. Rajiv Narain Dhar S/o Late Umesh Narain Dhar Resident of Mohalla - Gandhi Nagar, Kanti Factory Road, Kankarbagh, P.S. Aagamkuan, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Deptt. of Education, Govt. of Bihar
2. The Principal Secretary, Deptt. of Education, Govt. of Bihar
3. The Secretary, Higher Education, Deptt. of Education, Govt. of Bihar
4. The Director, Higher Education, Deptt. of Education, Govt. of Bihar
5. The Magadh University through its Vice - Chancellor at Bodh Gaya
6. The Vice - Chancellor, Magadh University at Bodh Gaya
7. The Registrar, Magadh University at Bodh Gaya
8. The Finance officer, Magadh University at Bodh Gaya
9. The Principal, B.D. College, Patna (Formerly Known as B.D. Evening College, Mithapur, Patna - 1) (a Constituent Unit of Magadh University at Bodh Gaya)
10. The Senior Auditor, Auditor, Audit Team of State Govt. of Appointed for Magadh University, Finance Deptt., Govt. of Bihar, Patna

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Arvind Kumar Sharma
For the Respondent/s : Mr. GA1- S.K. Sharma

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 01-12-2015

A peculiar situation has arisen for the petitioners, who are before this Court, because at the verge of their retirement, large sum of money is sought to be recovered from them in terms of the decision contained in Annexure- 16, dated 23.3.2012. Petitioners want quashing of the decision on the ground that this decision to recover has been taken unilaterally without even an opportunity or notice after more than 26 years on the objection of the auditor of the University.

Way back on 18.5.2009 and 11.12.2011, communications were sent by the Finance Officer/ Registrar of Magadh University, Bodh Gaya to the Principal of B.D.Evening College, Patna. These letters are Annexure- 8 and 9 to the writ application. By virtue of the said communication, the pay scale of the employees of the college in question was fixed and all those employees started drawing salary on the basis of the said communication all these years. There never was any objection with regard to such fixation of pay scale and drawl of the said emoluments by the employees of the said college including the present petitioners. The University wakes up only in the year 2011 when a so- called auditor team of the University raised objection with regard to the fixation of the pay scales to these petitioners and treating that objection to be sacrosanct, the Finance Officer of the University issued a letter to the Principal of the B.D.Evening College and a decision to order for recovery was, therefore, taken.

Besides other arguments, counsel for the petitioners submits that such recovery cannot be effected looking at the fact that they are low paid employees and have drawn salary for more than 26 years and they have now superannuated and Annexure- 16 came to visit them just at the threshold.

Learned counsel for these petitioners brings to the notice of this Court a very recent decision of the Hon’ble Apex Court which is the case of State of Punjab and others vs. Rafiq Masih (White Washer) and others, reported in (2015) 4 SCC 334.

The Hon’ble Apex Court dealing with such matters and vast judicial pronouncements on the issue of recovery, gave its opinion and conclusion in paragraph 18 as under :

> ***“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:***
>
> ***(i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service).***
>
> ***(ii) Recovery from the retired employees, or employees who are due to retire within one year, of the order of recovery.***
>
> ***(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.***
>
> ***(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.***
>
> ***(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee,***

would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

The law being what it is now it is difficult for this Court not to interfere with Annexure- 16 and allow the College or the University to recover sums indicated in Annexure- 16, after more than 26 years.

None for these petitioners have derived benefit on their own. This was the pay scale given to them on the basis of communication made in Annexure- 8 and 9. The submission of the counsel for the University that Annexure- 8 and 9 indicates that it was a tentative fixation of pay is required to be rejected on the ground that tentative position cannot remain tentative for 26 years and some finality, therefore, has to be presumed to the pay scales which these petitioners had drawn over two decades and a half.

Writ application, therefore, is allowed on the ratio and principles laid down by the Hon'ble Apex Court and, therefore, Annexure- 16 dated 23.3.2012 stands quashed. Recovery, if made, will be refunded to the petitioners. If no recovery has been made, the matter will rest at that.

(Ajay Kumar Tripathi, J)

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