IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 21525 of 2011

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Ram Naresh Singh S/O Late Dhurandhar Singh Ashoka Vihar, Near BISCOMAUN Colony, Gulzarbagh, P.S.- Alamganj, Dsitrict- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
3. The Director, Higher Education, Government of Bihar, Patna
4. Magadh University, Bodh Gaya, through its Registrar, District- Gaya
5. The Vice-Chancellor, Magadh University, Bodh Gaya, District- Gaya
6. The Finance Officer, Magadh University, Bodh Gaya, District- Gaya

.... Respondent/s

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Appearance :
For the Petitioner/s :
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 18-08-2015

Heard learned counsel for the parties.

The petitioner had moved this Court for payment of his various post retiral dues with interest.

The controversy now only remains to an amount of Rs. 1,12,065/- which, as per the stand of the University, was excess paid to the petitioner on account of erroneous fixation of pay.

Learned counsel for the petitioner submits that the petitioner superannuated on 31.01.2006 and thereafter he was not paid any retiral benefit forcing him to move this Court in the year 2011. It is submitted that the amount which was subsequently paid to the petitioner was after deducting Rs. 1,12,065/- as it has been objected to by the State Audit Team which has found that the aforesaid amount was excess payment. Learned counsel has submitted that without going into the merits of the matter, even if it accepted for the sake of argument that there was some error in fixation of pay, but the same not being attributable to the petitioner having furnished any factually incorrect information or fault or misrepresentation, the same cannot be now recovered. For such proposition, learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported in **(2015) 4 SCC 334**.

Learned counsel for the State submits that the University at the relevant time had fixed the pay of the petitioner and accordingly he was paid during his service tenure, but in the year 2008-09 the State Audit Team, had taken a view that the petitioner, during his service period, had been paid excess amount of Rs. 1,12,065/- and thus the same has been deducted from the retiral benefits which have been paid to the petitioner.

Upon considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court is in agreement with the submissions of learned counsel for the petitioner that the University having fixed the pay-scale and not disputing the same even after retirement and only because the State Audit Team has expressed a view that about erroneous fixation of pay, the petitioner having superannuated in the year 2006 cannot, at this stage, be subjected to any such recovery. The Court also finds that the decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** *(supra)* supports the contention advanced on behalf of the petitioner.

Accordingly, the respondents are directed to refund the amount of Rs. 1,12,065/- to the petitioner to be paid within four weeks from the date of production of a copy of this order upon the respondents no. 4 and 6. They shall also ensure that the remaining amount of leave encashment totalling Rs.1893/- is also paid to the petitioner within the aforesaid period, failing which both shall carry interest @ 12 % per annum, which shall be recovered from the respondents no. 4 and 6.

The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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