

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15703 of 2012

Mohan Jha Son of Late Suresh Jha Resident of Village- Narayanpatti, Police Station- Rajnagar, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Department, Government of Bihar, Patna.
3. L.N.M.U., Kameshwar Nagar, Darbhanga through its Vice-Chancellor.
4. The Registrar, L.N.M.U., Kameshwar Nagar, Darbhanga.
5. The Principal, V.S.J. College, Rajnagar, District- Madhubani.

.... Respondent/s

For the Petitioner/s : Mr. Satish Chandra Jha, Adv.
Mr. Kumar Ravi Shanker, Adv.
Ms. Puspa Rani, Adv.
For the University : Mr. Ajay Behari Sinha, S.C. 19
For the State : Mr. Sandeep Kumar, G.A. 8
Mr. Vivekanand Singh, A.C. to G.A. 8.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 05-10-2015

Heard learned counsel for the parties.

The petitioner is aggrieved by the act of the respondent University in reducing his pension and also directing for recovery on the ground that he was not entitled to the pay scale of Rs. 6500-200-10500/-.

Learned counsel for the petitioner submits that he was initially appointed as Assistant Librarian and thereafter to the post of College Librarian and in 1982 the State Government fixed the pay scale of the post as Rs. 680-965/-. Thereafter, in the year 1985, the Lalit Narayan Mithila University appointed the petitioner as College Librarian on which post he worked till his superannuation on 28.02.2003. It is submitted that earlier when



the petitioner had moved the Court for payment of his retiral benefits, the same was disposed off with certain directions and when those directions were not complied with, the petitioner filed a petition for initiating contempt proceeding and thereafter the respondents have come out with a case that the petitioner was not entitled to the scale of Rs. 6500-200-10500/- and thus having received excess payment, recovery was directed from him. It is submitted that from the materials on record, it is apparent that neither the University nor the State at any point of time raised any objection either with regard to the qualification or eligibility of the petitioner to hold the post of College Librarian or with regard to the pay scale which has been granted to him. It is submitted that the qualification, as prescribed in the relevant statute of the year 1986, cannot be made applicable retrospectively in case of the petitioner with regard to qualification since Clause-3 of the said statute carves out a separate category for persons who were holding the post and appointed on the same on the basis of the qualification prescribed before coming into effect of the said statute. Learned counsel submits that the stand both of the State as well as of the University in treating the petitioner to be not qualified and eligible to the post of College Librarian, in the aforesaid background, is not tenable.

Learned counsel for the petitioner submits that besides having a good case on merits, with regard to his entitlement to the scale of Rs. 6500-200-10500/-, even in view of the law settled by the Hon'ble Supreme Court relating to recovery,

the petitioner having superannuated in the year 2003 and there being no allegation of any misrepresentation or fraud on his part, such recovery is impermissible in view of the 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 as well as the University submit that because of the qualification of the petitioner, he has been held not entitled to the scale he had received and thus for the excess payment, recovery was justified.

Considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court finds substance in the contention of learned counsel for the petitioner. In view of the petitioner bringing on record materials to show that he was validly and duly appointed on the post of College Librarian by the University prior to coming into effect of the 1986 statute and there being no averment either in the counter affidavit filed on behalf of the State or the University, he does not possess the qualification for the post as was prescribed prior to coming into effect of the 1992 statute, the stand of the respondents cannot be sustained. Furthermore, the decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** (supra) also supports the case of the petitioner. Accordingly, it is held that the petitioner is entitled to the pay scale of Rs. 6500-200-10500/- which he drew till the time of his superannuation in the year 2003 and all retiral benefits are to be calculated treating it to be last pay drawn by him. Thus, any recovery, if made, shall

also be liable to be refunded.

The writ petition stands disposed off in the
aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

U		T	
---	--	---	--