IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20007 of 2010

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Dr.Sita Ram Prasad S/O Jehal Mahto R/O Vill. Tezabigha, P.S. Noorsarai, Distt. Nalanda since dead and substituted by his widow-Shakuntala Devi.

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary Human Resources Development Department, Government Of Bihar R/O Patna
2. The Registrar, Magadh University, Bodh Gaya R/O Gaya
3. The Finance Officer, Magadh University, Bodha Gaya R/O Gaya
4. The Senior Auditor, Magadh University R/O Bodh Gaya
5. The Deputy Director (Auditing Cell), Human Resources Development Department, Government Of Bihar R/O Patna
6. The Principal, Sardar Patel Memorial College R/O Udantpuri, Bihar Sharif, Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. C.B. Roy, Adv , & Mr. Binit Kumar, Adv
For the State	:	Mr. Rajiv Kumar, AC to GA-5.
For the Magadh University	:	Mr. Vipin Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

5 02-07-2015

<u>I.A. No. 7340 of 2013</u>

Heard learned counsel for the parties

2. For the reasons mentioned in the application, the prayer made therein in I.A. No. 7340 of 2013, as with regard to deleting the name of the writ petitioner, who had died on 20.02.2013, and substituting the name of wife of the petitioner namely, Shakuntala Devi, is allowed

3. Let necessary correction in respect of name of Shakuntala Devi be made in the cage column of the writ petition and I.A. No. 7340 of 2013 is, accordingly, disposed of.

4. The prayer of the original petitioner, the husband of the present petitioner, when it was filed on 09.12.2010, reads as follows:-

> *"That this is an application on behalf of the above named petitioner for issuance of an appropriate writ(S) order (S), or Direction (S) particularly in nature of certiorari to quash letter contained in Memo No. Fin/A/C/177 dated 03.08.2010 issued under Signature of the Registrar, Magadh University, Bodh Gaya whereby and whereunder it was directed to recover Rupees five Lakhs ninety six thousand sixty five only (596065/) from pension of the petitioner with the reason that alleged amount has excessively been paid to hi, however, without asking show cause regarding to the same."*

5. This Court on 10.12.2010, had stayed the operation of the impugned order dated 03.08.2010, on the ground that such order was passed in violation of the principles of natural justice.

6. In the counter affidavit which has been filed on 08.10.2014, it has been explained that after the impugned order was passed, the husband of the

petitioner had represented once again disputing the amount of deduction, whereafter the matter was re-examined and it would found that the excess amount paid to the husband of the petitioner was Rs. 5,71,486/- as against the impugned order of Rs. 5,96,065/-. To that extent, it would be relevant to quote paragraph nos. 4 and 5 of the counter affidavit. Thus, the subsequent event by which the husband of the petitioner was given the opportunity to explain upon the consideration of such explanation, the amount of deduction also got reviewed to Rs. 34,589/- will no longer by itself would amount to the compliance of the principles of natural justice.

7. Let it be noted that such excess amount which the husband of the petitioner was paid, was on account of his wrong pay fixation. The total of wrong fixation given in Annexure-A series, will go to show that the husband of the petitioner who was appointed as Lecturer on 04.04.1978 and his services were absorbed on the

post of Professor on 01.01.1981, could claim the post of Reader only after completion of 10 years of service w.e.f. 01.01.1991. Thus, his salary was calculated in the pay scale of Rs. 700 to 1600 from 01.01.1981 to 31.12.1985 and from 01.01.1986 his salary was calculated in the pay scale of Rs. 2200 to 4000. Yet again his salary from 01.01.1991calculated in the pay scale of Rs. 3000 to 5000 and in the revised salary of the post of Reader from 01.01.1996 in the pay scale of Rs. 12,000 to 18360. On all these detailed calculations by giving annual increment to the husband of the petitioner it was discovered that whatever payment had been drawn by the petitioner and whatever he wanted, by way of arrears of salary, were to be recalculated, inasmuch as, the petitioner came out with a claim of payment of his revised salary in the U.G.C pay scale to the tune of Rs. 17,57,285/- but out of such claim Rs. 7,77,420/- was inadmissible in the calculation made by the Auditors of the Government, who were deputed to verify each and every salary claim of the teaching and non-teaching employees of the University. In course of such verification by the Government Auditors, the total admissible claim as against the claim of Rs. 17,57,285/- by the husband of the petitioner, he was found entitled to 5,71,486/-. Thus, keeping in view that time to time payment made to the petitioner was already to the tune of Rs. 15,51,351/-, it was held that the husband of the petitioner was liable to refund of Rs. 5,71,486/-. This was done on 24.08.2011, while the husband of the petitioner was still alive and is said to have died only on 20.02.2013.

8. In that view of the matter, this Court now does not find any error in the amount of deduction arrived at as explained in the counter affidavit.

9. Let it be noted that not only in the case of the husband of the petitioner but in a large number of teaching and non teaching employees of the State of Bihar, payment of salary were being made without

following the rules of the Government. The Government was the finding authority and therefore, had all the reason to cross check payment of such amount.

10. Thus, when the service history of the husband of the petitioner was also analyzed along with others and it was found that he had been paid Rs. 5,71,486/- in excess, this amount in excess therefore, definitely was fit to be recovered. The only relief that the petitioner can get from this Court, therefore, would be that she should not be subject to huge recovery in one go.

11. This Court, however, keeping in view that now it is the widow of the original petitioner, who is to be subjected to recovery would give one more additional opportunity to her to represent her case before the Registrar of the University questioning any of the computation made in the counter affidavit and/or which is Annexure-A series, being the statement of account prepared by the Auditors of the University and the Government. If in course of such verification, any

portion of the claim of the husband of the petitioner is found to be substantiated at the instance of the widow petitioner, suitable order should be passed. If on the other hand the amount of Rs. 5,71,486/- being the excess amount still remains recoverable, its recovery should be made by the University by allowing easy installments and in no case, the wife of the original petitioner, is not subjected to huge recovery, in one lump sum. What would be the amount payable to the petitioner, on the other hand on the head of family pension, after allowing the monthly installments or any other payment admissible to the petitioner on account of some other retirement benefit admissible to the husband of the petitioner, would be the concern of the University but then it is also made clear that the amount of Rs. 5,71,486/- as on date is found refundable/recoverable from the petitioner, subject to its being reduced under the order of any competent authority of the University on the representation filed by the petitioner.

12. This Court, therefore, will direct the Registrar of the Magadh University to take necessary decision for recovery of such amount in easy installments from the payable amount of the original petitioner in capacity of the widow of the original petitioner. This must be done within a period of one month from the date of receipt of this order. It is made clear that if any bulk payment becomes admissible to the petitioner on account of any arrears that may however, be adjusted towards the excess amount

13. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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