

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14819 of 2010

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Md. Wasi Ahmad S/O Late Abdul Hai R/O Mohalla- Karamganj, P.O. &
P.S.- Laheriasarai, Distt.- Darbhanga

.... Petitioner/s

Versus

1. The Vice-Chancellor Lalit Narayan Mithila University, Darbhanga
2. The Registrar, Lalit Narayan Mithila University, Darbhanga
3. The Finance Officer, Lalit Narayan Mithila University, Darbhanga
4. The State Finance Auditor, Deputed At Lalit Narayan Mithila University,
Darbhanga
5. The State of Bihar through the Secretary, H.R.D., Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s :

For the Respondent/s : Mr. GA-2

For the University : Mr. Ajay Bihari Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

11 05-05-2015

No one appeared again on behalf of the petitioner alike

on the previous date as would be evident from reading of the
earlier order dated 23.01.2015.

2. When this writ application was filed by the
petitioner on 06.09.2010, he had come out with the following
prayer:

*"1.(i) For restraining the Respondents from lowering the
pay scale fixed earlier and also from lowering the pension
fixed earlier by the Respondents.*

*(ii) For quashing the letter A/c 1332/10 dated 13.07.2010
whereby the Respondents has informed to the petitioner that
the amount paid in excess will be recovered, from the
monthly pension of May 2010."*

3. As would be evident, the petitioner had two fold
grievances, while filing of the present writ application after more
than three years of his retirement. He had firstly claimed that



whatever salary was being paid to him at the time of retirement in the pay scale Rs. 5000-8000, should not have been refused by relegating the petitioner to the pay scale of Rs. 4000-6000. He had secondly sought to make out a case that any excess amount of recovery, which was sought to be made from the petitioner in view of the order dated 13.07.2010, should be quashed as it was in violation of the principle of natural justice and also as per the settled norms that no recovery should be made from a retired employee.

4. This Court, on perusal of the materials on record, would find that whatever entitlement of the petitioner was there, would make him liable to be paid his salary in the pay scale of Rs. 4000-6000 because he was holding the post of Clerk in a College. The State Government had only sanctioned the pay scale of Rs. 4000-6000 and, therefore, if any person in the University had been given the higher pay scale of Rs. 5000-8000 that will not entitle the petitioner to claim also retirement benefit on the basis of his salary drawn in the pay scale of Rs. 5000-8000. To that extent, the pay fixed by the department by treating him in the pay scale of Rs. 4000-6000 cannot be said to be erroneous either on facts or in law, in fact, all retirement benefits of the petitioner has to be paid by treating him to be of pay scale Rs. 4000-6000. The issue, however,

will be entirely different so far it relates to recovery. The petitioner had already retired from service on 31.03.2007 and the order of recovery was sought to be passed on 31.07.2010.

5. It is here that in the last query made in the order dated 23.01.2015, this Court had tried to know from the learned counsel from the university as to whether before issuance of the aforementioned order of recovery any show cause notice was given to the petitioner. Learned counsel for the university has very fairly submitted that no show cause notice was issued to the petitioner before passing such order of recovery.

6. In that view of the matter and also taking into account the judgment of the Apex Court in the case of **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.** reported in **(2012) 8 SCC 417**, this Court would hold that no recovery can be made from the petitioner with respect to excess amount paid to the petitioner quantifying at Rs. 1,82,809/-. Such order of recovery dated 13.07.2010 is, therefore, hereby quashed and if said amount has not been realized from the petitioner, the university is hereby restrained from doing so.

7. At the same time, it is made clear that even if the university will not be entitled to recovery the aforementioned excess amount, its decision to make payment of all the retirement

benefits of the petitioner by treating him in the pay scale of Rs. 4000-6000/- shall remain valid decision because ultimately at the end of the day, the petitioner was entitled only to that pay scale.

8. With the aforementioned observation and direction, this writ application is disposed.

(Mihir Kumar Jha, J)

Sujit/-

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