

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20584 of 2010

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Dr. Upendra Nath Pandey S/O Late Rama Nand Pandey R/O 211,
Anugrahpuri Colony, Gaya, P.S.-Rampur, Distt.-Gaya, Bihar. At Presnt
Resident Of 1411, Saraswati Vijaya Shatabdi, Sonari, Jamshedpur,
Jharkhand.

.... Petitioner/s

Versus

1. The State Of Bihar Through The Commissioner, Cum-Secretary, Higher Education, Bihar, Patna.
2. The Vice Chancellor, Magadh University, Bodh Gaya, Distt.-Gaya. Null Null
3. The Registrar, Magadh University, Bodh Gaya, Gaya.
4. The Finance Officer, Magadh University, Bodh Gaya, Gaya.
5. The Principal, S.N.S. College, Tekari, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : None.
For the State : Mrs. Nivedita Nirvikar GP16
For Magadh University : Mr. Bipin Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

5 02-07-2015 No one appears for the petitioner. Learned

counsel for the respondents State Government and the

Magadh University are, however, present.

2. The prayer of the petitioner in this writ

application when it was filed on 20.12.2010 had read as

follows:

“ That this writ application is being filed for
setting aside the communication dated 3.8.2010
vide Memo No. Fin/A/C72 given by respondent
no.3 whereby and whereunder Registrar has



directed the concerned Bank to recover the amount paid in excess to petitioner from his family pension, pension, gratuity and further for a direction for payment of remaining pensionary benefit with interest in view of order of this Hon'ble Court passed in M.J.C.No. 2142 of 2006.”

3. From the pleadings on record it is found that the petitioner had already superannuated while holding the post of Reader in the Department of Philosophy in S.N.Sinha College, Tekari, Gaya, on 31.1.2001. The petitioner thereafter having been not paid his full retirement benefit had filed C.W.J.C.No. 470/2005 for payment of retirement benefit. Such writ petition of the petitioner was allowed by an order dated 22.3.2006 wherein it had held as follows:

“ Considering this fact that there is nothing on the record to controvert the claim of the petitioners as such all these three writ applications are allowed. The Vice Chancellor, Magadh University, the Registrar and the Finance Officer, Magadh University, Bodh Gaya are directed to consider the case of the



petitioners and make payment of all admitted dues in the revised U.G.C. scale and also make payment of difference of salary on account of revision of pay scale in U.G.C. scale with effect from 1.1.86 and 1.1.1996. Accordingly the retiral dues of the petitioners like gratuity, leave encashment, provident fund, difference of D.A. should also be revised and paid to the petitioner within a period of four weeks from the date of receipt/ production of a copy of this order. The petitioners must also be supplied a calculation chart by the respondents. It is made clear that the respondents authorities of the University while calculating the pension and other retiral dues of the petitioner in the revised scale, will also take notice of the reported decision of Patna High Court in 2006(1) PLJR 507.

Let a copy of this order be handed over to the counsel appearing for the State as well as the counsel appearing for the Magadh University.”

4. It is the case of the petitioner that though he was paid certain retirement benefit but all benefits, which ought to have been given to him in view of the aforementioned order dated 22.3.2006 in C.W.J.C.No.



470/2005, were not extended to him, as a result thereof he had filed contempt application, M.J.C.No. 2142/2006. It was during the pendency of the aforementioned contempt application that the petitioner claims that he had been paid pension in revised scale of Reader, admissible amount of enhanced gratuity, leave encashment for 180 days and the amount of group insurance apart from arrears of salary and other admissible amount as per calculation made by the Auditors.

5. The contempt application thereafter was disposed of wherein it was held that since the admitted dues were paid to the petitioner, the contempt application was disposed of by giving liberty to the petitioner to represent his case before the Vice Chancellor and the Registrar of the University for claiming disputed amount as with regard to non-payment of amount of salary of the post of Professor as well as earned leave in new scale, Dearness Allowance

in new scale and the amount of interest on group insurance, provident fund and arrears of salary etc.

6. It is the case of the petitioner that after disposal of his aforesaid contempt application on 8.2.2010 he was granted promotion on the post of University Professor under Time Bound Promotion Scheme with effect from 8.7.1991 but at the time of giving payment of arrears of salary of the post of Professor he was subjected to an order of recovery of Rs.1,08,388/- under the impugned order dated 3.8.2010 on the ground that the Auditors of the Finance Department of the Government of Bihar while calculating the amount payable to the petitioner in terms of his promotion and his claim for arrears of payment of salary and consequential retirement benefit had found that an excess payment of Rs.1,08,388/- had been made to him and thus, the aforementioned amount should be recovered in 54 equal instalment of Rs.2,000/- and the rest of the amount of Rs.388/- in 55th instalment.



7. The respondents have filed a counter affidavit, copy whereof has been served on the learned counsel for the petitioner on 21.10.2014. From such counter affidavit it transpires that when the petitioner had claimed for arrears of earned leave in new scale, Dearness Allowance in new scale, D.D.A. in old scale, Group Insurance, Interest on provident fund amount, remaining arrears of salary from 1.1.1996 till the date of retirement and the payment of arrears of salary in promotional scale, those claims were subjected to verification, whereafter it was initially found that the petitioner had been paid excess amount beyond his claim amount and as such, when on repeated notices given to him the petitioner did not deposit the excess amount the impugned order was passed. The counter affidavit, however, also gives a picture of refund of certain amount and the matter being pending for examination and taking a final decision. To that extent, it would be relevant to quote paragraphs no. 4 to 9 of the counter

affidavit which reads as follows:

“4. That, the petitioner has filed the present writ petition whereby and wherein he prayed for quashing the M.U. letter vide no.Fin/A/C/72 dated 3.8.2010 addressed to Branch Manager, CBI, Bodh Gaya for the recovery of Rs. 1,08,383/- from the retiral benefit of the petitioner due to excess payment.

5. That, the State Government has deputed a team of auditors for the examination of bill claims of the teaching and non-teaching employees of colleges and university and university is directed make payment of admissible due after auditing the bill claims by the aforesaid Audit Team.

6. That, the petitioner non superannuated on 31.1.2001 as a Reader, Department of Philosophy S.N.Sinha College, Tekari and as such the bill claim of the petitioner in Reader pay scale duty forwarded by the College was placed before the Audit Team who examined and found excess amount of Rs.1,11,412/-. Hence a letter was given to Branch Manager, C.B.I. Bodh Gaya vide its no. Fin/A/C/72 dated 3.8.2010 for the recovery.



7. That, again the bill claims of the petitioner in Reader pay scale giving 14,940/- on 1.1.1996 to 31.1.2001 was placed before the Audit Team. The Audit Team examined and found a admissible amounting to Rs.1,24,471.00. After adjustment of Rs.1,11,412/-, Rs.13,059 /- has been paid through cheque no. 087101 dated 2.9.2011.

8. That, subsequently the petitioner has been promoted to the rank of Professor with effect from 8.7.1991 through M.U. Notification No. 397/GIA dated 21.8.2010. Hence, the final bill claim was prepared by the college which was placed before the Audit Team who examined and found admissible amounting to Rs.1,90,311/-. Hence Rs.1,90,311/- has been paid through cheque no. 100240 dated 22.4.2013.

9. That, so far the matter of quashing of letter no. Fin/A/C/72 dated 21.8.2010 a letter is being to Branch Manager, C.B.I. Bodh Gaya to stop the recovery and make payment the recovered amount to the petitioner proposal has been put before finance department for examination and final decision. The final decision is being taken shortly.”



8. As noted above, from the counter affidavit, which has not been replied by the petitioner despite service of a copy on his counsel on 21.10.2014, it becomes clear that after the impugned order of recovery was passed against the petitioner the matter was once again examined while looking into the claims of the petitioner for payment of his salary in the Reader's pay scale and the petitioner was found entitled for payment of Rs.1,24,471/- in which the amount of Rs.1,11,412/- was adjusted and the remaining amount of Rs.13,059/- had been paid to him by cheque No. 087101 dated 2.9.2011. It has also been explained that on account of promotion of the petitioner in the rank of Professor with effect from 8.7.1991 his final bill claim for payment of arrears of salary was examined by the team of Auditors and a sum of Rs.1,90,311/- was found payable to him which was again paid by cheque No. 100240 dated 22.4.2013.

9. It is in this background that the University



has also taken a plea that the matter relating to stopping of recovery and making payment of remaining amount to the petitioner as per the impugned order is under examination of the University and a final decision is likely to be taken shortly.

10. It would, thus, become clear from the averments made in the counter affidavit that the University itself has examined the claim of the petitioner as with regard to recovery as directed in the impugned order.

11. In that view of the matter, this writ application is disposed of with a direction to the respondents to ensure that if the final decision has not been taken as undertaken in paragraph no.9 of the counter affidavit, the same must be done without any further delay and in any event not beyond the period of three months from the date of receipt of this order.

12. It also must be made clear that since recovery from the petitioner was stayed by an interim



order of this Court dated 21.12.2010 in this case the University will be now at liberty to calculate the whole admissible and payable amount to the petitioner after taking into account the promotion of the petitioner on the post of Professor and if in course of such fresh calculation and consideration of payment of arrears of salary and retirement benefit any amount is still found to be recoverable from petitioner, steps for such recovery either by adjustment or asking the petitioner to pay such amounts shall be taken only after giving him a fresh show cause notice giving the details of excess amount paid to the petitioner. On the other hand, if no amount is now found to be recoverable in course of consideration as undertaken in paragraph no.9 of the counter affidavit, the University will pass an appropriate order and also refund any amount recovered from the petitioner on the basis of the impugned order.

13. Before parting with, this Court must make it clear that it was/is actually not a case of recovery in the



sense that when an employee, after his retirement gets promotion with retrospective effect and becomes entitled for payment of arrears of salary as also revision in the retirement benefit, the employer too has a right to make calculation of the admissible and payable amount under the head of arrears of salary and retirement benefit and also make an adjustment by deducting the amount already paid earlier and eventually may also pass an order for recovery of amount paid in excess to the employee. As noted above, in the case of the petitioner he retired way back in the year 2001 and thereafter when his claim for arrears of salary and retirement benefit initially in Reader's pay scale and later on in Professor's pay scale had to be decided, the University was entitled to look into the payment already made for arriving at the amount which was payable to the petitioner and was recoverable from the petitioner on account of any excess amount already paid to him.

14. With the aforementioned observations and

directions, this application is disposed of, and as a result whereof, the interim order of this Court dated 21.12.2010 also stands vacated.

15. Let a copy of this order be sent to the Registrar of Magadh University for its compliance in letter and spirit.

(Mihir Kumar Jha, J)

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