

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6559 of 2011

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Jai Prakash Aged About 52 Years son of Late Laljee Prasad Resident Of
Mitramandal Colony, Saket Vihar, Patna, P.S. Phulwari, District Patna.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Principal Secretary, Department Of Human Resources Govt. Of Bihar, Patna.
3. Secretary, Higher Education, Department Of Human Resources, Govt. Of Bihar, Patna.
4. Director, Higher Education, Department Of Human Resources, Govt. Of Bihar, Patna.
5. Vice Chancellor, Magadh University, At Bodh Gaya.
6. Registrar, Magadh University, At Bodh Gaya.
7. Finance Officer, Magadh University, At Bodh Gaya.
8. Principal, B.D. College (A Constituent Unit Of The Magadh University), Mithapur, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Sinha
For the Respondent/s : Mr. S.S. Sundaram
AC to Advocate General

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 13-01-2016

Heard Sri Pramod Kumar Sinha, learned counsel for the
petitioner, learned AC to Advocate General as well as Sri S.S.
Sundaram, learned counsel who has appeared on behalf of the
Magadh University.

The present writ petition was filed in the year 2011 with a
prayer to quash an order which was issued on 19.2.2011 under the
signature of Finance Officer of Magadh University whereby a
direction was issued to recover Rs. 1,83,776/- from the salary of the

petitioner.

The writ petition was firstly taken up on 20.4.2011 and on the said date on the prayer made by learned counsel for the Magadh University the case was adjourned for filing counter affidavit. It was adjourned for four weeks. This court further directed that in the meanwhile no deduction in view of Annexure - '9' which is impugned in the present writ petition shall be done till further orders. Finally, the writ petition was taken up on 27.11.2015 on which date again a prayer was made on behalf of the Magadh University for adjourning the case for filing counter affidavit. However, as a last indulgence further six weeks time was granted. This order also was not complied with and no counter affidavit has been filed.

The petitioner is a Class III employee in the B.D. College. Earlier, it was known as B.D. Evening College which is under Magadh University. The petitioner was given certain scale which was approved by the University long back. However, after several years only on the basis of objection raised by the Auditor of the University, the Finance Officer of the University unilaterally passed an order directing the Principal of the B.D. College to deduct the excess amount paid to the petitioner which is Rs. 1,83,776/-. The said order has been brought on record as Annexure - '9' to the writ petition.



Sri Sinha, learned counsel for the petitioner has assailed the order impugned primarily on the ground that the order impugned was issued without affording any opportunity of hearing to the petitioner. According to him, unilaterally the order impugned was passed whereas the petitioner was granted enhanced scale long back on 6.4.1990 vide Annexure - '4' to the writ petition. As per Annexure - '4' the petitioner was given enhanced pay scale of Rs. 785-1210/- and thereafter he continued to draw the said salary. Learned counsel for the petitioner has placed reliance on a recent judgment of this court passed in CWJC No. 8463 of 2015 on 1.12.2015 in which similarly situated employees of the same college was aggrieved with the order like the impugned order passed in the present case. This court by its order dated 1.12.2015 relying on a recent Supreme Court judgment reported in **(2015) 4 SCC 334 State of Punjab and others vs. Rafiq Masih (White Washer) and others** allowed the writ petition and quashed the impugned order of the said writ petition.

Of –course, learned counsel for the University tried to distinguish the case of the petitioner but from the material on record the court is satisfied that the petitioner's case may not be distinguished from the said case and as such in view of similar circumstances the present writ petition is allowed in terms of the order

dated 1.12.2015 passed in C.W.J.C. No. 8463 of 2015 and the impugned order which is Annexure – ‘9’ is hereby set aside.

It is made clear that if pursuant to the impugned order any recovery has already been affected, the respondents shall refund the said amount without any delay not beyond three months failing which, the petitioner shall be entitled to recover the said amount with interest at the rate of 18% per annum. Order must be complied within a period of three months from the date of receipt / production of a copy of this order.

The writ petition stands allowed.

(Rakesh Kumar, J)

Praful/-

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