

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7317 of 2013

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1. Smt. Moti Devi W/O Late Kamalkant Jha R/O Village-Sohrai, P.O.- Pandaul,
Police Station- Sakari, District- Madhubani

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Human Resources Department, Government Of Bihar,
Patna
3. The Vice-Chancellor, L.N.M.U., Kameshwar Nagar, Darbhanga
4. The Registrar, L.N.M.U., Kameshwar Nagar, Darbhanga
5. The Principal, R.K. College, Madhubani, District + Town- Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dharendra kumar Jha, Advocate.
For the University : Mr. Ajay Bihari Sinha, Advocate.
For the State : Mr. Prabhat Kumar, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 29-07-2016

Heard learned counsel for the petitioner and learned
counsel for the State as well as University.

In the present writ petition, petitioner is seeking relief for
quashing the order contained in Memo No.A/C 1026-28 dated
8./7.2011 issued by the Registrar, Lalit Narayan Mithila
University, Kameshwar Nagar, Darbhanga (hereinafter referred
to as 'the University') by which it has been directed to recover
Rs.1,18,813 from the pensionary amount including from family
pension which has been sanctioned in favour of the petitioner.

The husband of the petitioner joined the service as a

Library Clerk on 13.2.1963. During service period salary of the husband of the petitioner was enhanced from time to time, ultimately husband of the petitioner retired on 30.4.2096.

During service period or after retirement he was not informed about the excess payment. When the time came for payment of family pension the Registrar of the University served a letter dated 8.7.2011 thereby directed to recover excess amount paid to husband of petitioner. After fifteen years of retirement, the Registrar of the University has passed the order for recovery of the aforesaid amount. During service period the University had never taken care to correct the wrong payment made to her husband. When the person died order has been passed for recovery of excess amount, that too from her family pension, is wrong.

It is very pertinent to be noted, order of recovery has been passed unfortunate manner and that too without giving any notice or show cause. The Hon'ble Supreme Court in the case of State of Punjab & others V. Rafiq Masih, reported in 2014(4) PLJR 37 SC and State of Punjab and Ors. Vs. Rafiq Masih, reported in 2015(1) PLJR 261 SC has specifically stated that recovery from retired Class III and Class IV employees would be impermissible in law, if there is gap of more than five years it will not be appropriate for the employer to recover the excess amount paid to

the employees, subject to the condition, if payment has not been obtained on account of the act of fraud and misrepresentation of the employees concerned. It will be appropriate to quote paragraph 12 of the judgment in the case of Rafiq Masih (supra) (2015(1) PLJR 262 SC:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:-

(i) Recovery from employees belonging to Class-III and Class –IV service (or Group ‘C’ and Group ‘D’ service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer’s right to recover.”

As the University has not taken plea of fraud and

misrepresentation against the husband of the petitioner so much so there is gap of more than five years.

In such view of the matter, the order dated 8.7.2011 passed by the Registrar of the University is completely wrong, illegal, and not sustainable in the eyes of law and the same is quashed. If the amount has already been paid the question of payment of interest does not arise but if the amount which has been mentioned has been recovered or not has been given to the present petitioner who is widow in such view of facts and circumstances, the amount should be paid not beyond three months which will carry 9% compound interest up-to the date of actual payment including cost of litigation amounting to Rs.5,000/-. This order will not be treated as precedent for future litigation.

With the aforesaid observation and direction this writ petition is allowed.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
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