

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19214 of 2011

=====

Shri (Dr.) Braj Kishore Prasad, son of late Babu Durga Prasad, resident of Mohalla
– South of church, Mithanpura, P.O. – Ramna, P.S. – Mithanpura District
Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Higher Education Human Resources Development Department, New Secretariat, Patna
2. The Principal Secretary, Higher Education, Human Resources Development Department, Government of Bihar, New Secretariat, Patna
3. Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga through its Registrar
4. The Vice Chancellor Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga
5. The Registrar, Lalit Narayan Mithila University Kameshwar Nagar, Darbhanga

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Durganand Jha

For the Respondent/s : AC to SC 2

Mr. Chandra Mohan Singh

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 29-04-2016

Heard Sri Durganand Jha, learned counsel for the petitioner
, learned AC to SC No. 2 as well as Sri Chandra Mohan Singh,
learned counsel , who has appeared on behalf of the respondent / L.N.
Mithila University.

It is unfortunate that the petitioner, who superannuated as
University Professor long back on 30.11.1989 at the age about 83
years, was constrained to approach this court with a prayer to quash a
completely illegal order passed by the Registrar/ respondent no. 5
whereby unilaterally a decision was taken to deduct an amount of



Rs. 1,63,697/- from the monthly pension of the petitioner. Due to omission and commission on the part of the University the petitioner was earlier also constrained to approach this court on number of occasions and finally when writ petition i.e. CWJC No. 6386 of 2009 was disposed of granting liberty to the petitioner to file representation before the Vice Chancellor of the University raising his grievance for final settlement of his claim, the respondent no. 5 has come out with the impugned order i.e. Annexure – 1 to the writ petition, which was issued on 11.3.2011. By the said order it was directed to adjust Rs. 1,63,697/- on ward from the month of February, 2011 from pension of the petitioner. The petitioner thereafter approached this court by filing the present writ petition in the year 2011 itself, however on 4.11.2011 the case was adjourned with an expectation that University will file counter affidavit within six weeks. While adjourning the case it was observed that in the meanwhile if there is no recovery the recovery will not be made from the salary / pension of the petitioner. Subsequently on 2.1.2012 again the case was taken up, however it was adjourned for filing counter affidavit on behalf of the respondent/ University. Till date the University has not responded to the writ petition, no counter affidavit or cause has been shown by the University regarding the grievance of the petitioner. Accordingly, keeping in view the nature of relief sought for in the



petition as well as old age of the petitioner, the court proposes to allow the writ petition even in absence of the any counter affidavit. Once the petitioner retired long back in the year 1989 and his pension was fixed, after about 22 years the University was not having any authority to pass an order for recovery of any amount from the pensionary benefit of the petitioner. Recently in a case reported in **(2013) 12 SCC 580 (KUSHESWAR NATH PANDEY *Versus* STATE OF BIHAR AND OTHERS)** the Hon'ble Supreme Court had deprecated such action which was taken only after eleven years. In the present case the petitioner retired in 1989 and impugned order of recovery that too without affording any opportunity to the petitioner was passed on 11.3.2011. Accordingly, the order impugned i.e. Annexure - 1 is hereby set aside with a direction to the respondents, particularly respondent no. 5 to refund the amount which has been recovered from pension of the petitioner pursuant to Annexure - 1. Recovered amount is required to be paid to the petitioner within a period of three months from the date of receipt /production of a copy of this order.

In the writ petition besides making prayer for quashing Annexure - 1 the petitioner has also prayed for other reliefs in view of Annexure - 5 to the writ petition i.e. a representation which was filed before the Vice Chancellor. Accordingly, the respondent/

University besides making payment of the recovered amount in view of Annexure - 1 to the writ petition is also directed to grant all admissible benefit to the petitioner which has been claimed in Annexure - 5 to the writ petition. All such formalities must be completed within a period of three months from the date of receipt / production of a copy of this order.

It is made clear that if the order of this court is not complied with in its letter and spirit and complaint is filed before this court, the court will take very serious view in the matter.

The writ petition stands allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04-05-2016
Transmission Date	N.A.