

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4051 of 2016

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1. Asha Devi W/o Deceased Babu Nand Singh.
 2. Chandra Prakash S/o Deceased Babu Nand Singh.
 3. Manish S/o Deceased Babu Nand Singh,
All Residents of East Bhojpur Colony, Maa Asha Bhawan, Near Manokamna
Mandir, Ram Lakhan Path, Ashok Nagar, Patna -800020 P.S. Kankarbagh,
District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Human Resources Department,
Government of Bihar, New Secretariat, Patna.
2. The Secretary, Human Resources Department, Government of Bihar, New
Secretariat, Patna.
3. The Magadh University, through its Registrar, Bodh Gaya.
4. The Vice Chancellor, Magadh University, Bodh Gaya.
5. The Registrar, Magadh University, Bodh Gaya.
6. The Finance Officer, Magadh University, Bodh Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nilanjan Chatterjee, Advocate
For the State : Mr. Rajeev Ranjan, A.C. to G.P. 20
For the University : Mr. Priyank Deepak, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 08-11-2017

Heard learned counsel for the petitioners and Magadh
University.

2. The petitioners have moved the Court for the
following reliefs:

*“i. Issuance of a direction, order or writ
including writ in the nature of mandamus directing
the respondents to pay the pension amount of Rs.
20,381/- to the petitioner which has been arbitrarily
reduced to Rs. 5528/- in November 2015 and Rs.
7301/- in December 2015 without providing any
reason from the same.*

ii. Issuance of a direction, order or writ



including writ in the nature of mandamus commanding the respondents for consideration of the case of the petitioner for disbursement of full pension to the petitioner as per 6th Pay Revision recommendation by the Finance Department Government of Bihar adopted by the University.

iii. For any other relief/reliefs which Your Lordships may deem fit and proper on the facts and in the circumstances of the instant case.”

3. In sum and substance, the petitioner is aggrieved by the reduction in his pension amount from Rs. 20,381/- to Rs. 5,528/- and thereafter to Rs. 7,301/-. During the pendency of the case, the original writ petitioner died and has been substituted by his heirs.

4. The petitioner was appointed on the post of Lab Technician in the year 1978 and thereafter his service was confirmed on 16.02.1981 and he superannuated from such post of Lab Demonstrator on 31.05.2009. It appears that the original writ petitioner was being paid a particular pay scale on which he superannuated and thereafter, in terms thereof, his pensionary benefits were fixed, including that of pension. Later, it transpired that the post held by the petitioner carried a certain scale which was less than what the original petitioner was paid and then the authorities, by way of correcting a mistake, have reduced the pension of the writ petitioner and for the excess payment he had got of pension which was fixed on a wrong higher scale, adjustments have been made which has resulted in reduction in the amount of monthly



pension being paid to him.

5. Learned counsel for the petitioners submitted that the order of reduction of pension was never communicated to him and thus, he was not aware to the reason why such reduction was being made and further that when, for no fault of his, the payments have been made, there cannot be any recovery from what has already been paid to him.

6. Counter affidavit has been filed on behalf of the Magadh University, enclosing copy of Pension Payment Order dated 19.09.2015, which is self speaking and indicates that the excess amount, which has been paid, is now to be adjusted in monthly deduction from the pension amount.

7. Having considered the matter, the Court does not find any error in the conduct of the Magadh University. The petitioner may not be responsible for the excess payment made to him during the period of his service and even while receiving monthly pension, but this would not preclude the authorities from correcting a mistake committed by them. Here, it is admitted that the petitioner was paid in a higher scale and thus pension was also fixed at a higher rate and upon realization of such mistake, a correction has been made. The Court would pause here to indicate that though such action of the Magadh University of correcting the mistake may not be beyond



jurisdiction or illegal but recovery of the amount already paid may not be equitable.

8. The Court, thus, upholds the power of the Magadh University to make correction with regard to the entitlement of the petitioner to monthly pension, as the same has to be in terms of what he is legally entitled to, and once it is found that he was legally entitled to a lower pay scale, pension accordingly had to be fixed in terms thereof and the amount would obviously be lower to what has been paid to the original writ petitioner.

9. In view thereof, the correction being made cannot be said to be *mala fide*, arbitrary or unreasonable. However, as the original writ petitioner, after retirement, was receiving pension, though higher, but not due to any fault or misrepresentation on his part and whatever was paid to him cannot be recovered from his heirs, moreso when he has died. This is also in conformity with the decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported as **(2015)4 SCC 334**, especially paragraph no. 18(v) thereof which reads as under:

“12(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 recovery.”



10. In the result, the writ petition stands disposed off holding that no recovery can be made from the payment already made to the original writ petitioner. However, prospectively from the date the authorities have rectified the mistake and corrected the amount, the late husband of the petitioner is held entitled to payment of only the revised corrected amount. The authorities shall ensure that if there has been any recovery/adjustment of any amount already paid, the same shall be credited in the account of the petitioner and thereafter the original writ petitioner would be deemed to have been paid the amount to which he is entitled and on the same basis, the widow shall be granted family pension as per the correct entitlement of her late husband.

(Ahsanuddin Amanullah, J.)

P. Kumar

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