

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18680 of 2014

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Razia Hasan, wife of late Md. Zamirul Hasan @ Md. Zamirul Hasan Azimabadi,
Resident of Mohalla- Khan Mirza, Police Station Sultanganj, P.O. Mahendru,
District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Human Resources Development Department, Patna.
2. The Magadh University, Bodh Gaya through its Vice Chancellor, Bodh Gaya, Gaya.
3. The Registrar, Magadh University, Bodh Gaya, Gaya.
4. The Finance Officer, Magadh University, Bodh Gaya, Gaya.
5. The Principal, College of Commerce, Kankarbagh, Patna-20.
6. The Patliputra University, Patna through Vice-Chancellor, Patliputra University, Patna
7. The Registrar, Patliputra University, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Aditya Narayan Singh, Advocate

For the Respondent/s : Mr. Sanjay Kumar, AC to GA-4

For the University : Mr. Amitabh Sohan, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 07-09-2018

Heard Mr. Aditya Narayan Singh, learned counsel for
the petitioner and State as well as University.

2. The present writ application involves the dispute as
to the entitlement of the original petitioner, the status and pay fixation
on the basis of entitlement fixed by the University.

3. Mr. Aditya Narayan Singh, learned counsel
appearing on behalf of the petitioner submits that the Auditor of the
State has no role to play in the matter of pay fixation in view of the
fact that the Universities Act and the Statute prescribe the statutory



forum or a statutory authority to determine the pay scale and entitlement of the employee. He also submits that the issue as to the authority of the State Auditor has been examined by the various Courts and it has been held out that the State Auditors have no authority and it is the realm of the University to examine the entitlement and decide the entitlement in accordance with law.

4. In view of the above, the Court finds substance in the submission of Mr. A. N. Singh, learned counsel for the petitioner that the University is required to apply its independent mind and not to be guided by the opinion or objection of the State Auditor.

5. Accordingly, the order as contained in Annexure-1, so far as determination of the entitlement of the original petitioner and direction for recovery is concerned, is unsustainable. It is, accordingly, quashed.

6. In view of the judgment of the Apex Court in the case of **State of Punjab & Ors Vs. Rafiq Masih**, reported in (2015) 4 SCC 334, the Court is of the view that there shall be no recovery from the salary paid to the original petitioner. However, the pensionary benefit/ family pension, if any, is subject to fresh determination by the appropriate authority of the University in accordance with law. Accordingly, the University is hereby directed to take fresh decision with regard to entitlement of the original



petitioner and fixation of pay and pensionary benefit independently and without being influenced or prejudiced by the objection of the State Auditor. Fresh determination of the entitlement of the original petitioner may be taken by the respondent University within a period of four months from the date of receipt/production of a copy of this order. While taking decision, the University is required to see that the original petitioner is no more to defend the pay fixation and grant of promotion.

7. With the aforesaid, the writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	

