

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4867 of 2012

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Sudhindra Mohan Mishra Son Of Late Madan Mohan Mishra Resident Of
Krishna Kutir, Lakshsman Street, North-West Of Congress Office,
Balbhadrapur, P.O. Laherisarai, P.S., District And Town Darbhanga

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Secretary, Higher Education, Govt. Of Bihar,
Patna
2. Lalit Narayan Mithila University Through Its Registrar, Kameshwar Nagar,
Darbhanga
3. Vice Chancellor, Lalit Narayan Mithila University, Kameshwar Nagar,
Darbhanga
4. Finance Officer/Pension Officer, Lalit Narayan Mithila University, Darbhanga

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Umesh Prasad Singh, Sr. Advocate,
	:	Mr. Rakesh Kumar, advocate,
	:	Mr. Rajani Kant Singh, advocate,
For L.N. Mithila University:	:	Mr. Md. Nadim Seraj, advocate
For the Respondent/s	:	Mr. Deepanjali Gupta, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

10 17-09-2018

1. Heard Mr. Umesh Prasad Singh, learned senior
counsel appearing on behalf of the petitioner and counsel
appearing on behalf of the State and University.

2. The grievance of the petitioner in the present writ
petition is two folds. Firstly he is aggrieved by reducing his
pensionary benefits and secondly he is aggrieved by the order
directing recovery. Petitioner superannuated on attaining age of
superannuation on 31st August 2002 and after the retirement of
the petitioner the respondents have taken decision to reduce the
pension of the petitioner and directed recovery. So far as



recovery part is concerned the law is well settled by the Apex Court in the Case of **State of Punjab & Ors. Vs. Rafiq Masih etc. 2015 (4) SCC 334**. The Apex Court held that after superannuation recovery is not permissible. Admittedly in the present case there is no fraud or misrepresentation and as such the respondents are not justified in directing the recovery of any amount from the pension which has already paid to the petitioner. The second part of the grievance of the petitioner is the reduction of pension of the petitioner. Learned senior counsel appearing on behalf of the petitioner submits that no order vitating evil and civil consequences can be passed without providing reasonable opportunity of being heard. Large number of judgments are there on point of compliance of pre-decisional hearing as post-decisional hearing has been deprecated as empty formality and denial of principles of natural justice.

3. Mr. Singh has drawn attention to this Court to the counter affidavit where the respondents have taken stand that after the action of reduction of pension and recovery they have issued notice in 2013 which is only formality and it is a case of post-decisional hearing which does not serve the purpose of compliance of the natural justice. Reference in this connection may be made to the Judgment of Apex Court in AIR 1988 SC



686 and the Judgment of the Apex Court in **H.L. Trehan reported in AIR 1989 (S.C) 568**. Where the Apex Court has categorically held that no order vitating civil and civil consequences can be passed without compliance of natural justice. In the Judgment Supreme Court has held out post-decisional hearing does not fulfill the requirement of natural justice.

4. Considering the fact that the order of reducing pension of the petitioner was passed by the respondents without giving opportunity of hearing to the petitioner as such the order reducing pension of the petitioner cannot sustain. Accordingly, the order contained in Annexure-6 dated 28.7.2010 is hereby quashed.

5. Ordinarily when the order is quashed for procedural impropriety the issues are remitted back for adjudication afresh but in the instant case when the petitioner superannuated in the year 2002 and adverse order passed by the respondents in the year 2010, the Court does not find any justification to grant liberty to the respondent to reopen the matter afresh. The petitioner after 16 years of superannuation is entitled to peaceful enjoyment of retirement, therefore, the Court in the peculiar facts and circumstances directs to the



respondents to restore the pension which was admissible to the petitioner on retirement and which was paid to the petitioner before issuance of the impugned order contained in Annexure-6 dated 28.7.2010. The respondents are hereby directed to calculate the entitlement of the petitioner in terms of the pension which was admissible to the petitioner prior to the order dated 28.7.2010 and ensure payment of difference thereof within a maximum period of four months from the date of receipt/production of a copy of this order and also ensure payment of unreduced pension.

6. With the aforesaid the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

T.Kr./-

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