

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17252 of 2016

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Rana Yugal Kishore Singh Son of Late Ram Nihora Singh, Resident of Village-
Abbu Mahmadpur Main Road Bakhtiyarpur, P.O. Bakhtiyarpur, District- Patna.

.... Petitioner.

Versus

1. Magadh University, Bodh Gaya, Gaya.
2. The Vice Chancellor, Magadh University, Bodh Gaya.
3. The Pro Vice Chancellor, Magadh University, Bodh Gaya.
4. The Registrar, Magadh University, Bodh Gaya.
5. The Finance Office, Magadh University, Bodh Gaya.
6. The Principal, A.M. College, Gaya under Magadh University.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar, Advocate
For the Respondent/s : Mr. Girijish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 15-05-2018

Heard learned counsel for the petitioner and Magadh
University (hereinafter referred to as the “University”).

2. The petitioner has moved this court for following reliefs:

*“That this writ petition is being filed for issuance of
a writ in the nature of certiorari for quashing the
pension payment order No. 4641 of 2016 dated 31-
03-2016 as well as pension notification dated 31-
03-2016 contained as Annexure-11 Series to the
petition issued under signature of Registrar of the
University by which and whereunder the Pension is
fixed on the post of Assistant in place of post of re-*



designated Demonstrator in physics as well as directed to payment of gratuity amount after recovery of over payment of salary from period of 1-4-2011 to 29-02-2012 and after quashing the same be further pleased to issued writ of mandamus directing the respondent-authorities to fix the pension to the petitioner as drawn last pay Rs. 24250/- on the post of re-designated Demonstrator and pay the retiral benefit as gratuity, leave encashment, insurance as well as dues salary from 01-09-2011 to 30-05-2012 to the petitioner and be further pleased to pass an appropriate writ or writs, direction or directions as your Lordships may deem fit and proper”.

3. The petitioner is aggrieved by his reduction in pension followed by recovery of certain amount. He was initially appointed as Office Assistant in an affiliated college subject to approval of the Governing Body on 29-03-1978. Thereafter, he was promoted to the post of Laboratory In-charge on 17-03-1983. The petitioner continued on the post. However, in view of the fact that in the year, 2006, all persons working as Lab In-charge, were re-designated as Demonstrators, the petitioner continued till 31-05-2012 but was held



to have retired w.e.f. 25-03-2011, after having attained the age of 62 years. The University has fixed his pension not on the actual pay he was receiving on the date of his retirement, but in terms of his entitlement in law, which was less than what he was actually getting. Further, recovery has been made for the period the petitioner had worked beyond the age of 62 years i.e. till 31-05-2012.

4. Learned counsel for the petitioner submitted that the private affiliated college had appointed the petitioner on the post of Office Assistant and thereafter, promotion was also given to him on the post of Laboratory In-charge and the petitioner got consequential benefits. It was submitted that when the post held by the petitioner was re-designated as Demonstrator, the same became a teaching cadre, so, he was required to continue till the age of 65 years, but has been made to superannuate much prior w.e.f. 25-03-2011 which is arbitrary. It was further submitted that there cannot be any recovery made of the amount which has already been paid to the petitioner.

5. Learned counsel for the University submitted that on the basis of counter affidavit filed, the initial appointment of the petitioner was not in accordance with law and further that the post held by the petitioner after becoming a non-teaching post, he ought to have superannuated in March, 2011 and, thus, the salary drawn by him after that amounting to Rs. 349905/- was required to be adjusted,



which has been done.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the court finds that the fixation of pension of the petitioner by the University cannot be faulted. From the own showing of the petitioner, his very initial appointment on the post of Office Assistant discloses that it was subject to the approval of the Governing Body, but no such approval has been brought on record, and on query of the Court to learned counsel for the petitioner, he also had no explanation for the same. Further query of the Court as to how an office assistant can be promoted on the post of Laboratory In-charge as the said post was not a promotional post of an Office Assistant; again, there was no explanation for the same by learned counsel for the petitioner.

7. Be that it may, since the petitioner has continued and now superannuated and the University has also not raised the issue of validity and legality of the appointment of the petitioner, both as Office Assistant and on promotion to the post of Laboratory In-charge, the Court would not give any finding on the same. However, once the petitioner could not have held the higher post for which he may also have been paid, the University-authorities are well within their right to exercise their jurisdiction and re-fix the pension as per the notional last pay which the petitioner would have drawn correctly



and in accordance with law, in the scale to which he was entitled in law. Thus, for the purposes of fixing pensionary and post retiral benefits, the exercise being done on the legal entitlement of the petitioner, the same cannot be said to be arbitrary or unreasonable and accordingly, requires no interference. However, coming to the recovery of Rs. 349905/-, the court finds that as there had been no misrepresentation or laches on the part of the petitioner, in him having been paid the amount and also that he had worked for the period. Thus, this Court finds that such recovery cannot be permitted and accordingly, the order for recovery is set aside. The court is fortified in its view by the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and Ors. Vs. Rafiq Masih** reported as (2015) 4 SCC 344. However, till the time he worked and has been paid his salary, he shall not be entitled for payment of pension for that period and re-fixing pension on notional basis on his correct and legal entitlement to a particular pay scale, actual payment shall be made from the period starting after he was paid his last salary. The recovered amount be returned to the petitioner, within four weeks from the date of receipt/production of copy of this order before the respondent No. 4. However, the pensionary benefits shall be paid in terms of the entitlement which the University has found relating to the petitioner, after notionally fixing his last pay drawn, in accordance



with law.

8. The writ petition stands disposed off in the
aforementioned term.

(Ahsanuddin Amanullah, J)

A.K.V./-

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