

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15940 of 2009

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Kusum Lal Yadav S/O Ayodhya Prasad Yadav R/O Murliganj, P.S. Murliganj,
Distt.- Madhepura Petitioner/s

Versus

1. Chancellor Of Universities Of Bihar, Raj Bhawan, Bihar, Patna
 2. B.N.Mandal University, Through The Registrar, B.N.Mandal University
Laloo Nagar, Madhepura
 3. Vice Chancellor, B.N.Mandal University, University Campus, Laloo Nagar,
Madhepura
 4. Registrar, B.N.Mandal University, University Campus, Laloo Nagar,
Madhepura
 5. Finance Officer, B.N.Mandal University, University Campus, Laloo Nagar,
Madhepura Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr.Sujeet Kumar Sinha
For the Respondent/s : Mr.Ritesh Kumar

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 03-01-2019

1. The present writ petition has been filed for quashing the letter dated 30.07.2009 issued by the respondent no. 4, whereby and whereunder it has been directed to recover a sum of Rs. 2,22,966/- from the petitioner herein upon the time bound promotion granted to the petitioner having been found to be illegal. It is not in dispute as agreed by the learned counsel for the parties that no recovery can be made from an employee specially after such an employee has superannuated from service and in the present case, the petitioner has superannuated on 31.01.2003 whereas the recovery has been sought to be made in the year 2009. It is submitted that the present case is squarely covered by the judgments rendered by the Hon'ble Apex Court



reported in *(2015) 4 SCC 334 (State of Punjab vs. Rafiq Masih)* and *(2009) 3 SCC 475 (Syed Abdul Quadir v. State of Bihar)*.

It would be relevant to reproduce the relevant portions of the order of the Hon'ble Apex Court passed in *(2015) 4 SCC 334 (State of Punjab vs. Rafiq Masih)*, paragraphs no. 18 and 19 whereof are reproduced hereinbelow :-

“ 18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers would be impermissible in law :

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service)

(ii) Recovery from retired employees, or employees who are due to retire within one year of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(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 recover.

19. We are informed by the learned counsel representing the appellant State of Punjab that all the cases in this bunch of appeal would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."

2. Having regard to the facts and circumstances of the case and the law laid down by the Hon'ble Apex Court not disputed by the learned counsel for the parties, the present writ petition is allowed and the impugned order dated 30.07.2009 passed by the respondent no. 4, whereby and whereunder the recovery has been sought to be made from the petitioner is hereby quashed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.01.2019
Transmission Date	NA

