IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2253 of 2018

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Shakuntala Devi, W/o Late Ashok Kumar Singh, Resident of Village-Matihani, P.S.- Matihani, District- Begusarai.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Director, Higher Education, Govt. of Bihar, Patna.
3. The Vice Chancellor, L.N. Mithila University, Darbhanga.
4. The Registrar, L.N. Mithila University, Darbhanga.
5. The Finance Officer, L.N. Mithila University, Darbhanga.
6. The Principal, S.K. Mahila College, Begusarai.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Shashi Bhushan Singh
For the Respondent/s : Mr.Madanjit Kumar- GP-20

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

6 14-10-2019 Heard learned counsel for the petitioner and the respondents.

On behalf of the University, the incharge Registrar, L.N.Mithila University Darbhanga has filed counter affidavit. In the counter affidavit, following stand has been taken in para 4 to 7, which is quoted herein below for ready reference:

> "4. That the present writ application has been filed for commanding and directing the respondent authorities to produce the letter by which the husband of the petitioner has been reverted to the post of Routine Clerk from the post of Store Keeper and upon production of said letter the same may be quashed by issuance of writ of certiorari as without

issuance of notice and even after 10 years after death of the husband of the petitioner such information has come during penedncy of contempt application and directing the respondent authorities to fix the pay scale of the husband of the petitioner in pay scale of Rs.1000-15200/- after granting him benefit of 1st and 2nd ACP treating him Storekeeper in compliance of order passed in Civil Appeal No. 516/2013 (State of Bihar Versus Sunny Prakash) whereby non-teaching employee of college are also entitled to get the benefit of 1st and 2nd ACP and further a direction to make payment the consequential benefit thereupon and also directing the respondents authorities to make payment of interest at the rate of 12% since the petitioner has been harassed by the respondent University by slashing down the pay scale of the husband of the petitioner to Rs.3050-4590/- adjusted pre and post retiral dues from the salary paid to the husband of the petitioner service period.

5. That it is humbly submitted that the matter was heard on 11.5.2018 and there was a direction for filing of the counter affidavit in the light of the judgment of the Apex Court in the case of State of Punjab and others Versus Rafiq Mashih etc in regard to whether recovery can be made from the pensionary benefit payable to the petitioner.

6. That it is humbly submitted that the recovery for the period from 2005 to 2019 has been stayed for the present. The para no. 12(iii) of the order/ruling of the Hon'ble Apex Court restrains the recovery made for a period in excess of five years, before the order of recovery is issued. The observation

made in para 12 up to 12(iii) of the order is as follows:

12. 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 herein above, 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 employee, 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.

That it would be pertinent to mention here that till date the order for recovery for excess paid amount has not been issued to the petitioner.

7. That it is humbly submitted that the university requires the recalculation for determining the excess paid amount i.e. for the period from September 2014 to August 2019 (five years). After arriving the correct amount of recovery for last five years, the further process shall take place. It is humbly submitted that the recovery has been stopped for the present."

The widow is before this Court and as per the counter affidavit, the University has admitted that no recovery is admissible in case of excess payment made during the period preceding five years of the order, or recovery from the employees belonging to Class-III and Class-IV (Group C and Group-D) and recovery from retired employees or employee, who are retired within one year.

The petitioner is a widow and therefore from their own affidavit, he admits that excess payment is not open to recovery. It has been admitted by the respondents in the counter affidavit that the recovery has been stayed.

Considering the judgment of the Apex Court in the case of **State of Pubjab & Ors Vs. Rafiq Masih (White Washer), Etc.:**, reported in **2015(1) PLJR (SC) 26** and the stand of the respondent University in para 6 of the counter affidavit, the writ application is allowed. The respondents are directed to ensure payment of pre and post retiral dues without insisting on the issue of excess payment and directed recovery of excess payment.

Necessary follow up for payment of arrears shall be taken by the respondent University at the earliest preferably within a period of 60 days from the date of receipt/production of a copy of this order.

With the aforesaid, this application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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