

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2466 of 2019

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Harishchandra Pandey, son of Sri Ramnandan Pandey, Resident of Daudpur Kothi, Gali No3, P.O. M.I.T., District- Muzaffapur, the retired Head Assistant, Uma Pandey College, Pusa, District- Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director Higher Education, Education Department, Government of Bihar, Patna
4. The Vice Chancellor, Lalit Narayan Mithila University, Darbhanga
5. The Registrar, Lalit Narayan Mithila University Darbhanga
6. The Finance Officer, Lalit Narayan Mithila University Darbhanga
7. The Principal, Uma Pandey College, Pusa, District- Samastipur

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 2508 of 2019

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Premchandra Pandey, son of Sri Ramnandan Pandey, Resident of Ward No.7, Harpur Mohamda, P.O. and P.S. Pusa, District- Samastipur, the retired Upper Division Assistant, Uma Pandey College, Pusa, District- Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Higher Education, Education Department, Government of Bihar Patna
4. The Vice Chancellor, Lalit Narayan Mithila University, Darbhanga.
5. The Registrar, Lalit Narayan Mithila University, Darbhanga
6. The Finance Officer, Lalit Narayan Mithila University, Darhanga
7. The Principal, Uma Pandey College, Pusa, District Samastipur

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 2466 of 2019)

For the Petitioner/s	:	Mr. Vijay Kumar Singh, Advocate
For the Respondent/s	:	Mr. Madhaw Prasad Yadav (GP-23)
For the University	:	Mr. Rajeev Kumar Singh, Advocate

(In Civil Writ Jurisdiction Case No. 2508 of 2019)



For the Petitioner/s : Mr. Vijay Kumar Singh, Advocate
For the Respondent/s : Mr. Jitendra Kr. Roy 1 (SC-13)
For the University : Mr. Rajeev Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 08-07-2021

Heard learned counsel for the petitioners and the respondents.

2. Since the issues involved in both the writ applications are identical question of facts and law, with the consent of the parties, both the writ applications have been heard together and are being disposed of by this common judgment.

3. Petitioner (Harishchandra Pandey) in C.W.J.C.2466 of 2019 retired after attaining the age of superannuation on 31.01.2014. Petitioner (Premchandra Pandey) in C.W.J.C.2508 of 2019 retired after attaining the age of superannuation on 30.11.2016. After retirement of the petitioners, the University on the objection raised by the Pay Verification Cell of the State Government decided to reduce the pay scale of the petitioner in both the writ applications and also decided to adjust the alleged excess amount paid to the petitioners after their retirement i.e. on 31.01.2014 and 30.11.2016 respectively and reduced the pension of the petitioners.

4. Learned counsel for the petitioners submits that the petitioners were paid salary as per their entitlement fixed by the Statutory Pay Fixation Committee and they received the salary up



to the age of retirement i.e. 31.01.2014 and 30.11.2016. After five years in C.W.J.C.2466 of 2019 and three years in C.W.J.C.2508 of 2019, the University has decided to adjust the excess amount from the dues payable to the petitioners and thus it is a case of recovery from the amount payable to the petitioners.

5. Learned counsel for the petitioners further submits that pay fixation was done by the Statutory Committee and there is no fraud and misrepresentation involved in the pay fixation of the petitioners in either of the two cases and, therefore, recovery of amount in the name of adjustment after 5 and 3 years of retirement of the petitioners is impermissible in view of the law laid down by the Apex Court in the case of **State of Punjab & Ors vs Rafiq Masih (White Washer)**, reported in **(2015) 4 SCC 334**.

6. Learned counsel for the petitioners further submits that the matter of pay fixation at par with the employees of the State Government was considered and finally decided by the Apex Court in the case of **State of Bihar & Ano. Vs. Sunny Prakash & Ors**, reported in **(2013) 3 SCC 559** and once the Apex Court has decided the issue in **Sunny Prakash case** (supra), the University as well as the State has absolutely no jurisdiction to nullify the effect of the judgment of the Apex Court in Sunny Prakash case (supra).



7. Mr. Vijay Kumar Singh, learned counsel for the petitioners has also highlighted the issue as to objection with regard to power and function to determine the pay fixation, as has been discussed by this Court in numerous cases and consistent view of this Court is that the Statutory Authority of the University has exclusive jurisdiction in the matter of pay fixation of its employees.

8. Learned counsel appearing on behalf of the University has referred to the judgment of this Court in the case of Dr. Kedar Nath Pandey & Ors Vs. Magadh University & Ors (C.W.J.C. No. 7636 of 2014 disposed of on 15.01.2015) to contend that the State Government has jurisdiction to raise audit objection under the provisions of the Universities Act.

9. Raising objection is one issue and usurping power and function of the Statutory Committee of the University is altogether different. In the present case, from the pleadings it appears that the power and function of the University under the Statute has been usurped by the Pay Verification Cell of the State Government and on the dictate of Pay Verification Cell of the State Government, the University has adjusted the so-called excess amount from the post retiral dues of the petitioners and thus recovered amount payable to them in the name of adjustment, which is impermissible



in view of the judgment of the Apex Court in the case of **Rafiq Masih (White Washer)** (supra).

10. In the totality of the fact situation, both the writ applications are allowed to the extent that recovery in the name of adjustment by the University is nullity and the University as well as the State Government is obliged to refund the amount recovered from the petitioners by way of adjustment within a period of one month from the date of receipt/production of a copy of this order.

11. So far as entitlement of post-retiral dues of the petitioners are concerned, the University is granted 60 days time from today to provide opportunity of hearing to the petitioners in the matter of determination of post-retiral dues, particularly, on the issue of hostile discrimination against the petitioners, as the learned counsel for the petitioners submits that entire University staff are getting salary on the basis of fixation made by the Pay Fixation Committee, but these two petitioners were targetted by the University only because of the dictate of the Pay Verification Cell of the State Government.

12. Fresh decision in this regard may be taken by the University after opportunity of hearing to the petitioners, particularly on the issue of hostile discrimination.



13. In the event, it is found that other employees of the University are paid salary and recalcitrant approach has been adopted by the University in the matter of entitlement of the petitioners and recovery by way of adjustment, the respondents have to re-fix the pension of the petitioners and restore the revised pension and other consequential benefits within a period of two months thereafter, failing which the petitioners are entitled to interest at the rate of 9% per annum from the date of retirement till the date of actual payment, which shall be borne out from the Vice-Chancellor, Registrar, Finance Officer of the University and Director, Higher Education in proportion.

14. The University is also obliged to make payment of difference of DA and HRA in both the cases, as the same has been adjudicated by this Court in various cases including in the case of Indranath Jha.

15. With the aforesaid, both the writ applications stand allowed and disposed of.

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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