IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8321 of 2022

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Arun Kumar Jha Son of Ramashish Jha Resident of Village- Kaligaon, P.S.- Singhwara, District- Darbhanga, Bihar- 847104.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary Department of Human Resources Development, Government of Bihar, Patna.
3. Lalit Narayan Mithila University Kameshwar Nagar Darbhanga, through its Registrar.
4. The Vice Chancellor Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga.
5. The Registrar Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Binodanand Mishra, Advocate. Mr. Sandeep Kumar, Advocate. Mr. Ravindra Kumar Roy, Advocate.
For the University	:	Md. Nadeem Seraj, Advocate.
For the Respondent/s	:	Mr. S. K. Ranjan, AC to GP 17.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 24-11-2022

Heard Mr. Binodanand Mishra, learned counsel for the petitioner duly assisted by learned counsel Mr. Sandeep Kumar and Mr. Ravindra Kumar Roy, Md. Nadeem Seraj, learned counsel for the respondent Lalit Narayan Mithila University and Mr. S. K. Ranjan, learned AC to GP 17 for the State.

The present writ application has been filed seeking quashing of the letter no. C/PO/4981/21 dated 16.03.2021, whereby it has been directed to recover the sum of Rs.2,99,294/-, which is said to have been paid in excess to the salary of the petitioner for the period 01.03.1989 to 31.03.2017. The petitioner further seeks a direction upon the concerned respondent to fix the pension of the petitioner as per the last pay drawn and accordingly a fresh calculation to be made in connection with other retiral dues including the gratuity and leave encashment, apart from that a fresh fixation of the pension.

The short facts which led to the filing of the present application is that the petitioner was appointed as a counter clerk by the governing body of Mahraja Lakshmishwar Singh Memorial college, which was a constituent college under the Lalit Narayan Mithila University.

It is submitted that after serving more than 33 years, the petitioner superannuated on 31.01.2019. Having been superannuated from the post of Assistant, he was paid substantive retiral benefits, however, vide letter no. C/PO/4981/21 dated 16.03.2021, an amount of Rs.2,99,294/- has been deducted, which is impugned herein.

The learned counsel for the petitioner while making his submission drawn the attention of this court towards the judgment rendered by the learned Co-ordiante Bench of this court based on the judgment passed by the Hon’ble Supreme Court in the case of

State of Punjab Vs Rafiq Masih (2015) 4 SCC 334, submits that it is a settled proposition that no recovery can be made from an employee especially such an employee has superannuated from service of Class III & IV posts. He further submits that admittedly the petitioner was a class III employee and the salary was fixed way back in the year 1989 itself. He next submits that before passing the order of recovery, at no point of time any notice or opportunity of hearing has been given to the petitioner and this order has been passed unilaterally, apart from the fact that the impugned order has been passed by the Pension Officer, who is not even a competent authority. Further reliance has also been made on various judgments/orders passed by the learned Co-ordinate Bench of this Court, including the case of **Kusum Lal Yadav Vs. Chancellor of Universities of Bihar (CWJC No.15940 of 2009)** and **Dr. Rajendra Prasad Sinha and others Vs. Rajendra Agriculture University and others (CWJC No. 11030 of 2011).** He submits that in identical situation the employee on being aggrieved by the recovery made from the retiral benefits, approached before this Court and this Court on relying upon various judgment of the Apex Court has been pleased to set aside the order of recovery.

On the other hand, learned counsel for the University by referring to the statement made in the counter affidavit filed on behalf of the respondent nos. 3 to 5 has vehemently contended that the pension of the petitioner was re-fixed on the basis of pay point received from pay verification cell and after re-calculation, the legitimate admissible benefits have been given to the petitioner. He further contended that it has also been informed by the Pay Verification Cell that the petitioner has been paid excess to his entitlement under the head of arrears of salary, hence the same has been adjusted in accordance with law.

Having heard the contention of the parties and considering the materials available on record, *prima facie* case of the petitioner appears to be squarely covered by the judgment rendered by the Hon'ble Apex Court in the case of **State of Punjab Vs Rafiq Masih (White Washer) & others (2015) 4 SCC 334** as also the case of **Syed Abdul Qadir Vs. State of Bihar & others, (2009) 3 SCC 475.**

For the proper appreciation of the issue involve in the present case, it would be apt to reproduce the relevant paragraph of the order of the Hon'ble Apex Court passed in case of **State of Punjab Vs Rafiq Masih (supra),** Paragraph nos.18 and 19, whereof are reproduced herein below:-

"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 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 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 appeals, 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."*

Having regard to the facts and circumstances of this case and the law laid down by the Hon'ble Apex Court as well as learned Co-ordinate Bench of this court the impugned order of recovery/adjustment as contained in Annexure 16 to the writ application is hereby set aside.

It is needless to say that since the impugned order of adjustment is being set aside, the authority would pass the necessary order for refund of the amount.

So far as the other grievance of the petitioner with regard to the wrong fixation of pension as per the last payslip is concerned, he submits that one similarly situated employee, namely, Mr. Kamla Kant Thakur working on the same post in the college with effect from same date and had been getting salary in the same scale, his pension was fixed at the rate of Rs. 13,045/- per month, however, the pension of the petitioner has been fixed at the rate of Rs.12,650/- which *prima facie* appears to be not justified. He further submits that the pension of the petitioner could not be fixed less than other similarly situated employees working on the same post, with effect from the same date.

In reply to the aforesaid averments, there is neither any discussion nor any reply has been given by the university in its counter affidavit. In support of aforesaid submission, further reliance has been made on a Apex Court's Judgment, in the case of **Sushil Kumar Singh Vs. Pramukh Sachiv Irrigation Department,** reported in **(2014) 16 SCC 444** and by referring to paragraphs 7 of the judgment, Mr. Mishra vehemently submitted that admittedly, if any mistake had been committed in fixation of salary the mistake was committed way back in the year 1989 that is much prior to 31 years from the date of retirement and moreover neither any salary has been paid on account of any misrepresentation nor by reason of fraud committed on the part of the petitioner, hence, the salary of the petitioner fixed way back in 1989 could not be reduced that too unilaterally by the university.

Having heard the parties on this issue, this court deems it apt and proper to allow the petitioner to file a representation before the Registrar, Lalit Narayan Mithila University, within a period of four weeks from today along with the materials and the judgments in support of his claim.

If such representation is filed in the aforesaid period, the Registrar, Lalit Narayan Mithila University shall consider the same and pass a reasoned and speaking order taking into consideration the fact, *inter alia*, that other similarly situated person has been getting higher pension than the petitioner.

It is needless to say that the representation of the petitioner must be considered and disposed of within the period of six weeks, and if the claim of the petitioner finds favour, necessary order would be passed withing the aforesaid period.

Accordingly, the present writ application stands disposed of with aforesaid direction.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.12.2022.
Transmission Date	NA