IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14696 of 2021

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Mosmat Laxmi Devi, Wife of Late Ramesh Chandra Jha, Resident of Village-Lahta, P.S. Manigachhi, District- Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Higher Education Department, Government of Bihar, Patna.
2. The Kameshwar Singh Darbhanga Sanskrit University through its Registrar, Kameshwar Nagar, Darbhanga.
3. The Vice-Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
4. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga (herein after referred to as K.S.D.S.U. Darbhanga).
5. The Finance Officer, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga
6. The Principal, Sarvjit Sanskrit Upshastri College, Lahta, Putai, P.S.-Manigachhi, District-Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kripa Nand Jha, Advocate
For the Respondent/s	:	Mr. Madhaw Pd. Yadaw (GP-23) Mr. Arvind Kumar AC to GP-23
For the University	:	Mr. Tej Bahadur Singh, Sr. Advocate Mr. Nagendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 09-11-2022

Heard Mr. Kripanand Jha, learned counsel for the petitioner, Mr. Tej Bahadur Singh, learned senior counsel, duly assisted by Mr. Nagendra Kumar Singh, for the Kameshwar Singh Darbhanga Sanskrit University and Mr. Madhaw Prasad Yadav, learned GP-23 for the State.

2. The present writ application has been filed for the following reliefs:

> "(i) For issuance of an appropriate direction, order or writ in the nature of mandamus commanding the respondents to pay the entire retiral dues of the petitioner i.e. Earned leave, pension, provident fund, gratuity, differences of salary in 7th pay scale etc. admissible to her husband along with interest @ 10% over the entire due amount from the date it is due till the date of its actual payment.
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> (ii) For holding and declaring that the similar benefits allowed and paid to a similarly situated employees cannot be withheld to other employees, similarly situated, and thus the respondents are under bounden duty to pay the same to this petitioner immediately and forthwith in view of the mandate of Bihar State Litigation Policy.
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> (iii) For any other relief/reliefs to which the petitioner may be found entitled to, in the facts and circumstances of the case."

3. Short facts, which led to the filing of the present writ application is that the husband of the petitioner was duly appointed in the College on 03.02.1977 by the Managing Committee of Sarvjit Sanskrit Upshastri Mahavidylaya, which is affiliated college under the Kameshwar Singh Darbhanga Sanskrit University, Darbhanga (hereinafter referred to as 'the University') against the vacant and sanctioned post approved by the Registrar of the University vide Memo No. 2205 dated 22.09.1981 w.e.f. 01.01.1980. After serving for almost four decades, the husband of

the petitioner superannuated from service on 31.01.2019, as a teacher.

4. It is contended that in the year 2016, a notification was issued vide Memo No. 311 dated 07.02.2016 (Annexure-3) by the Registrar of the University that the Triple Benefit Scheme has also been implemented for the deficit affiliated College w.e.f. 31.08.2010 and the copies whereof was communicated to all the concerned. The scheme of Triple Benefit was not allowed to the petitioner's husband and unfortunately he died on 12.06.2019 without getting the said benefit. Despite running from pillar to post, when the petitioner has not been allowed the death-cum-retiral benefit of her late husband, she approached before this Court by filing the present writ application.

5. Before coming to the subsequent development, it is contended by the learned counsel for the petitioner that the salary of the petitioner's husband was revised from time to time along with other employees of the respondent University by the Pay Fixation Committee, duly constituted by the University itself and at no point of time any irregularity was ever pointed out by any of the authority and the petitioner's husband was paid accordingly, till the date of his retirement.

6. During the pendency of the writ application, the Government of Bihar came out with a letter, as contained in Memo No. 11 dated 21.05.2021, directing all the concerned that the amount of regular pension will be paid only after verification of salary by the Pay Verification Cell and on the basis whereof it has been found that an excess amount of Rs.6,93,188/- has been wrongly calculated and sanctioned in favour of the petitioner, as such, the Registrar of the University issued an Office Order as contained in Memo No.985 dated 22.08.2022 (Annexure-B to the counter affidavit) and deducted the aforesaid amount of Rs.6,93,188/- from the pension and gratuity of the petitioner's husband.

7. The petitioner being aggrieved, assailed the aforesaid order of deduction by filing an interlocutory application and submits that the pay scale of the petitioner's husband was fixed by the Pay Fixation Committee, duly constituted by the University time to time and having been found no irregularity, he was allowed to superannuate from his service on 31.01.2019, apart from the fact that after more than 10 years of his pay fixation, as was done in the year 2012, the verification of the entitlement of the petitioner's husband has been made by the Pay Verification Cell behind his back, as he died on 12.06.2019. On verification,

the retiral benefits of the petitioner's husband is calculated afresh and having been found excess payment of Rs.6,93,188/-, the same was deducted from the family pension and gratuity of her deceased husband. Learned counsel for the petitioner while assailing the order of recovery vehemently argued that the recovery, as aforesaid sought to be made from the family pension of the petitioner after the death of her husband is not permissible in the eyes of law. Moreover, this Hon'ble Court as well as Hon'ble Supreme Court on number of occasions by various judgments held that no recovery of excess payment can be made in absence of any misrepresentation. He further relied upon the judgment rendered in the case of **Syed Abdul Qadir and others Vs. The State of Bihar and Others**, since reported in **(2009) 3 SCC 475** as well as the **State of Punjab & Others Vs. Rafiq Masih (White Washer)**, reported in **(2015) 4 SCC 334**.

8. On the other hand, learned senior counsel appearing on behalf of the University submits that the calculation of death-cum-retiral benefit of the petitioner's husband has been made in pursuance to the direction issued by the Government of Bihar vide Memo No. 11 dated 21.05.2021 directing all the concerned that the amount of regular pension will be paid only after verification of salary by the Pay Verification Cell. He further contended that

after making proper calculation of the outstanding dues of the petitioner's husband, the same has been duly paid to her and a certificate was issued in this regard by the Branch Manager, S.B.I., K.S.D.S.U.

9. While concluding his argument, it is contended that the University has deducted the excess amount from the pension/family pension and other post-retiral benefits from the husband of the petitioner on the basis of the calculation and recommendation of Pay Verification Cell of Education Department, Government of Bihar. As per the Office Order issued by the Director, Higher Education Department, Government of Bihar vide Letter No. 15M1-110/202/2849 Patna dated 24.12.2021 directing all the University to get the pay point of salary of all the teaching and non-teaching staff of Upshastri College verified from the pay verification cell of the Education Department, Government of Bihar and accordingly, the University has sent the records relating to the salary of teaching and non-teaching employees of Up-Shastri College under the University for verification by the Pay Verification Cell and after verification of the pay points of the salary of the husband of the petitioner, deduction has been made. He further contended that the University is under obligation to implement the direction of the

Department of Higher Education, Government of Bihar, as the State Government allocates the fund to the University for payment of monthly salary, pension, post retiral dues and other benefits to the teaching and non-teaching employees of the University.

10. Having heard the submissions made on behalf of the parties and considering the materials available on record, the only point for consideration before this Court is as to whether the University is entitled to recover the alleged excess amount of Rs.6,93,188/- from the family pension/gratuity of the petitioner that too after the death of the deceased employee, who had superannuated on 31.01.2019 itself, much before the issuance of impugned order of deduction. From the materials available on record, it is evident that the husband of the petitioner was entitled to get the benefit of Triple Benefit Scheme, which was made effective w.e.f. 31.08.2010 and the benefit was extended to all the employees of the Deficit Affiliated College. It is also admitted that the husband of the petitioner superannuated from the post of Teacher w.e.f. 31.01.2019 and during his service period, the pay scale of the petitioner's husband along with other employees was fixed by the Pay Fixation Committee, duly constituted by the University, way back in the year 2012 itself and till date of his retirement, no objection was ever raised.

11. Now it is also evident from the record that this is not the case of the respondents that the fixation was made on account of any misrepresentation or fraud on the part of the petitioner's husband and he had any knowledge that any amount was being paid to him was more that what he was entitled to. Moreover, even if, the case of the respondent is accepted, the alleged excess payment made to the petitioner was result of improper fixation by the Pay Fixation Committee, duly constituted by the University itself, pursuant to the direction of the Department of Higher Education and as such the petitioner's husband cannot be held to be responsible.

12. For proper appreciation of the issue in question, it would be apt and proper to quote para 27 and 28 of the judgment rendered by the Hon'ble Supreme Court in the case of **Syed Abdul Qadir** (supra).

> 27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the

employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99.

28. Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be

held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made."

13. Further, the Hon'ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih (White Washer)**, reported in **(2015) 4 SCC 334** dealing with the similar issue relating to recovery of amount paid in excess without fault of recipient, after his superannuation, has been pleased to hold that "as between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the concerned employee. If the effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the

corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover."

14. The Hon'ble Supreme while parting with the judgment has been pleased to postulate certain situations of hardship wherein recovery by the employees would be impermissible in law. For the proper appreciation, para. 18 whereof is quoted 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:
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> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
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> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
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> (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."

15. From the aforesaid judgments rendered by the Hon'ble Supreme Court one thing, which is evident that any excess amount paid to an employee not on account of any misrepresentation or fraud on his part or the employee had no knowledge that the payment received was in excess that what was due or wrongly paid, and when the excess payment has been made for a pretty long time of more than five years, before the order of recovery is issued, the same is not permissible in law.

16. While parting with the judgment, this Court is also conscious of the fact that the impugned order of recovery has been issued behind the back of the employee, who died much earlier before issuance of the impugned order and he is no more alive to defend his case of rightful entitlement of the pay scale, which was fixed during his service period and no objection had ever been raised either by the State or the University and he was allowed to

superannuate, unblemishably. In the aforesaid settled legal position and the observations made hereinabove, this Court finds that the impugned order of recovery, as contained in Memo No. 985 dated 22.08.2022, is not sustainable in the eye of law as well as on facts and, as such, the same is fit to be quashed and the respondent University is hereby directed to refund the deducted amount from the family pension/gratuity of the petitioner forthwith along with statutory interest made thereon.

17. Accordingly, the present writ application stands allowed.

18. It is needless to say that if any other outstanding amount is still remain due with the University, the same is also required to be paid, as early as possible, preferably within a period of four weeks from the date of receipt/production of a copy of this order.

(Harish Kumar, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.11.2022
Transmission Date	NA