

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13340 of 2019

Uma Devi Wife of Late Virendra Kumar Singh Resident of Walipur Road,
near Masjid, Town- Jamalpur, P.O. and P.S.- Jamalpur, District- Munger

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Human Resources Development, Govt. of Bihar, Patna.
2. The Director of Higher Education Government of Bihar, Patna.
3. The Tilka Manjhi Bhagalpur University Bhagalpur through the Vice Chancellor, Bhagalpur.
4. The Registrar Tilka Manjhi Bhagalpur University, Bhagalpur.
5. The Principal Jamalpur College, Jamalpur.
6. The Jamalpur College Jamalpur through the Principal, Jamalpur College, Jamalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ratna Deep Prasad, Advocate
For the Respondent/s	:	Mr. Pramod Kumar Singh (AC to SC16)
For the University	:	Mrs. Rekha Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 22-12-2022

Heard Mr. Ratna Deep Prasad, learned counsel appearing on behalf of the petitioner, Mrs. Rekha Prasad, learned counsel for the Tilka Manjhi Bhagalpur University and Mr. Pramod Kumar Singh, learned AC to SC 16.

2. The present writ application has been filed seeking a direction upon the respondent University to make payment of the admitted arrears of salary to the tune of Rs. 2,56,920/- along with interest, group insurance etc. of the petitioner's husband and further to fix the final family pension payable to the petitioner.



3. It is the case of the petitioner that the petitioner's husband, Late Virendra Kumar Singh, was appointed as Assistant in the Jamalpur Evening College, Jamalpur vide order dated 09.08.1976 issued by the then Secretary of the College. It is further contended that as the college was taken over by the respondent University as constituent college in the year 1987, service of the petitioner's husband, including other employees was absorbed by the said University vide Notification No. 38/05 dated 17.02.2005.

4. Learned counsel for the petitioner drawn the attention of this Court towards Notification No. 38/05 as contained in Annexure '2', wherein, the name of the petitioner with other three persons have been recommended for absorption in the concerned college, on the post of Assistant and accordingly absorbed in the said post. He further submits that, unfortunately, the husband of the petitioner died in harness on 19.05.2005 and thereafter, the petitioner was sanctioned provisional family pension by the respondent University vide letter dated 15.12.2005 as contained in Annexure '4' to the writ application. He next submits that all the retiral benefits/outstanding dues of the petitioner's husband have been fixed by treating him as an office Assistant, though the petitioner right from very beginning had been discharging his duty on the sanctioned post of Assistant and at no point of time, any



objection has ever been raised by the University, however, after his death, the University came out with an objection that there is no sanctioned post of Assistant and he was working as an Office Assistant and, as such, all the retiral benefits/outstanding dues have been paid in commensurate to the post of Office Assistant in a most arbitrary and illegal manner.

5. On the other hand, Mrs. Rekha Prasad, learned counsel for the University submits that while calculating the admitted dues of the petitioner, the respondent University found that at the time of granting financial progression under the ACP/MACP to the non-teaching employees of Jamalpur Evening College, Jamalpur, the date of the absorption of the husband of the petitioner was shown as 11.02.1987 whereas, as per the Government notification, the date of absorption of teaching and non-teaching staffs were taken to be as 01.02.1988 and, as such, the date of absorption of the petitioner's husband was rectified vide a corrigendum dated 27.02.2019 and accordingly, the date of extending the benefit of ACP/MACP was rectified.

6. In view of the aforesaid rectification, the family pension of the petitioner has already been revised and it has been found that an amount of Rs. 57,423/-, Rs. 8,453/- and Rs. 65,876/- has been deducted from the different heads of the arrears of



pension. She further submits that the respondent University had also calculated the arrears of salary of the petitioner and it has been found that Rs. 91,638/- was paid in excess to the petitioner's husband as the concerned college has calculated the claim of the petitioner's husband in the pay scale of Rs. 5500-9000 which is of Assistant, though the petitioner's husband was entitled to the pay scale of Rs. 4000-6000 which is of Office Assistant. She vehemently submits that reason behind such calculation is that till today, there has not been any sanctioned post of Assistant in the concerned college and therefore, the absorption of the petitioner has not been treated against the post of Assistant rather the same was required to be done in the pay scale of Office Assistant and accordingly, necessary correction has been made in accordance with law.

7. At this juncture, learned counsel for the petitioner submits that the issue with regard to the recovery from the Class 4/ Class 3 employees from the retiral benefits have stood settled by Hon'ble Supreme Court in the case of **State of Punjab Vs. Rafiq Masih (White Washer)** reported in **2015 (4) SCC 334**. He also submits that now the husband of the petitioner is no more survive and, as such, any order passed behind the back of the erstwhile employee is fully illegal and without jurisdiction.



8. Having heard the learned counsel for the parties and considering the materials available on record, prima facie, from the materials available on record it appears that the service of the petitioner was confirmed as Assistant, as is evident from Annexure '2' to the writ petition. Further from the Annexure '8' to the supplementary counter affidavit, which is relevant part of the Agrawal Commission Report, suggesting that 8 sanctioned posts of Assistant for Jamalpur Evening College was also recommended and later on 8 persons, including the petitioner were considered for absorption and the petitioner has been absorbed as an Assistant against the sanctioned post. Even other documents, including the letter written by the Registrar of the Bhagalpur University, address to the Principal, Jamalpur Evening College, Jamalpur, the petitioner has been recognized as an Assistant and at no point of time, the petitioner has been treated as an Office Assistant. It is needless to say that any order having civil consequences cannot be passed in respect of a person, without providing any opportunity of hearing in accordance with law. Admittedly, the impugned action of treating the petitioner's husband as an Office Assistant and making deduction from the arrears of pension, is not only unilateral behind the back of employee but also taken after 14



years of the death of an employee and, as such, having no sanctity of law, apart from arbitrary and illegal.

9. Considering the aforesaid facts, this Court, prima facie, finds substance in the submissions of the writ petitioner and, as such, he directs the respondent nos. 3 and 4 to consider the case of the petitioner afresh by treating him as an Assistant and pass necessary order, in accordance with law ensuring all the benefits.

10. So far the recovery is concerned, it is further observed that the issue with regard to the recovery from the Class III and Class IV employees/ retired employees has stood settled by various judgment of the Hon'ble Supreme Court. It would be apt and proper to quote para. 18 of the judgment of **State of Punjab Vs. Rafiq Masih (White Washer)** (supra):

“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.”

11. Considering the settled legal position, the action of the respondent University in deducting any amount is held to be bad in the eyes of law and directed the respondent nos. 3 and 4 to restitute the amount which has been deducted from arrears of retiral benefits including the arrears of salary of the petitioner, forthwith.

12. Accordingly, the present writ petition stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.12.2022.
Transmission Date	NA

