

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9922 of 2021

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Madan Roy @ Madan Ray Sobn of Late Ram Narain Roy Resident of Village
- Dhanhar, Police Station- Warisnagar, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Commissioner- Cum- Secretary Human Re-
sources Department (Higher Education) Govt. of Bihar, Patna.
2. Director High Education, Govt. of Bihar, Patna.
3. The Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga
through its Registrar.
4. The Vice - Chancellor, The Lalit Narayan Mithila University, Kameshwar
Nagar, Darbhanga.
5. The Finance Officer, The Lalit Narayan Mithila University, Kameshwar Na-
gar, Darbhanga.
6. The Principal, B.R.B. College, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar, Advocate
For the University	:	Mrs. Alka Verma, Advocate
For the State	:	Mr. Nishant Kumar Jha, AC to SC-28

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 01-05-2023 Heard Mr. Ranjan Kumar, learned counsel

appearing on behalf of the petitioner; Mr. Nishant Kumar Jha,

learned AC to learned SC-28 for the State and Mrs. Alka Verma,

learned counsel for the University.

2. Learned counsel appearing on behalf of the
petitioner submits that the respondent nos. 3 to 6 by filing
counter affidavit in Paragraph No. 5 made the statement of
calculation and chart relating to the pre and post retiral dues of
the petitioner and the benefit of pay revision from time to time



including the benefit of ACP/MACP granted to the petitioner. Based on the said calculation chart as provided in Para-5 of the counter affidavit, the respondents have found that Rs. 10,44,068/- is to be recovered from the petitioner and the same has been sent for administrative approval of the University.

3. Learned counsel appearing on behalf of the petitioner submits that for any incorrect calculation which has been detected by the University, the petitioner cannot be penalized after almost nearly two decades of his retirement. Law is well settled in this regard that for any incorrect calculation if excess payment is made to the retired employee, the same has to be recovered within a very short span of time.

4. Learned counsel appearing on behalf of the University submits that no illegality has been committed by the University in detecting that Rs. 10,44,068/- is recoverable from the petitioner, but the same has not been recovered till date. Learned counsel further submitted that any benefit on account of ACP/MACP was granted to the petitioner after the ACP scheme was adopted by the State Government from due date, hence the University cannot be held responsible for such act.

5. Having heard the rival submissions of the parties, the contention of the respondent University is not sustainable.



The law is well settled that if no representation or misrepresentation has been found to have been committed by the petitioner during the service period which has accounted for any loss or led to the excess payment, the petitioner cannot be penalized after lapse of two decades of retirement. The University has no jurisdiction to recover such excess payment after lapse of two decades of retirement as has been held in Paragraph No. 18 in the case of **State of Punjab and Others v. Rafiq Masih (White Washer and Others** reported in (2015) 4 SCC 334, inter alia, as follows.

“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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.”

6. The action of the University as stated in counter affidavit is held to be illegal and the University is restrained from making any recovery. University is solely responsible for incorrect calculation having been detected after two decades for which the petitioner cannot be penalized.

7. Accordingly, the present writ petition is allowed.

8. Petitioner is at liberty to file a representation for claiming payment of any dues to which the petitioner is entitled for before the Registrar, Lalit Narayan Mithila University, Darbhanga.

9. The Registrar must make payment within six weeks after receipt / communication of this order.

(Purnendu Singh, J)

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