

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5572 of 2019

Ajay Kumar Srivastava Son of Late Chandrika Prasad Resident of Village-
Rampurdi, P.O.- Rampurdi, P.S.- Bishanpur, District- Darbhanga, retired
Assistant, Yadu Nandan College, Dighwara.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Higher Education Dept., Government of Bihar, Patna.
2. Baba Saheb Bhim Rao Ambedkar Bihar University, Muzaffarpur, through its Registrar.
3. The Vice Chancellor, Baba Saheb Bhim Rao Ambedkar Bihar University, Muzaffarpur.
4. The Registrar, Baba Saheb Bhim Rao Ambedkar Bihar University, Muzaffarpur.
5. Jai Prakash University, Chapra through its Registrar.
6. The Vice Chancellor, Jai Prakash University, Chapra.
7. The Registrar, Jai Prakash University, Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. M.N. Parbat, Sr. Advocate Mr. Ved Prakash Srivastava, Advocate
For J.P. University	:	Mr. Ritesh Kumar, Advocate
For B.R.A. University	:	Mr. Nikhil Agrawal, Advocate
For the State	:	Ms. Binita Singh (SC- 28) Mr. Vivek Anand Amritesh, AC to SC-28

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 30-10-2023

Heard Mr. M.N. Parbat, learned senior counsel assisted by Mr. Ved Prakash Srivastava, learned counsel appearing on behalf of the petitioner; Mr. Ritesh Kumar, learned counsel appearing on behalf of Jai Prakash University; Mr. Nikhil Agrawal, learned counsel appearing on behalf of B.R.A. Bihar University and Ms. Binita Singh, learned SC-18 for the State.

2. Mr. Ritesh Kumar, learned counsel appearing on behalf of Jai Prakash University informs this Court that no



recovery has been made till date.

3. Mr. M.N. Parbat, learned senior counsel appearing on behalf of the petitioner submitted that no recovery can be made in light of the judgments passed by the Apex Court in case of *State of Punjab & Ors. Vrs. Rafiq Masih (White Washer) & Ors.* reported in (2015) 4 SCC 334 and *Thomas Daniel Vrs. State of Kerala & Ors.* reported in 2022 LiveLaw (SC) 438 as such, a specific direction may be given by this Court so that the officers of the University may not proceed to recover any amount from the pensionary benefits of the petitioner, who had retired from the post of Assistant, which is a Class-III post, in the year 2019.

4. Perusal of the records reveal that the petitioner , while being posted at Yadu Nandan College, Dighwara, as Assistant, was on medical leave between the period 05.05.2017 to 15.10.2017. As alleged by the petitioner, he rejoined service from 16.10.2017 but was kept in abeyance till 12.11.2017. A specific statement has been made in paragraph no. 7 of the counter affidavit filed on behalf of respondents no. 5 to 7 that the petitioner has already been paid a sum of Rs.20,36,974/- in lieu of payment of salary arrears (ACP/MACP) and with regard to payment of Earned Leave Encashment of the petitioner, it



was found that his pay has erroneously been fixed on the higher side and payments have accordingly been made to him during his service period. However, in the supplementary counter affidavit filed on behalf of respondent no. 5 and 7, in para 4, it has been stated specifically that after the Pay Verification Cell issued Pay Verification Certificate to the petitioner, a total amount of Rs. 3,41,060/- has been found recoverable from the petitioner after adjusting the payment of the due amount of Rs.4,81,248/- towards Leave encashment (Annexure-A to the Supplementary Counter Affidavit by respondent no.5 and 7).

5. Based on the above facts, it would be advisable to the petitioner to file a detailed representation before the Registrar of the University to examine his case, as to whether, benefit of ACP and MACP resulting into financial upgradation can be denied to the petitioner and for the said reason, his leave encashment can be withheld, which partakes the form of salary in light of law laid down by the Apex Court as mentioned in above paragraph, as well as, in case of ***Amresh Kumar Singh & Ors. Vrs. The State of Bihar & Ors.*** reported in ***2023 Online SC 496.***

6. The representation of the petitioner is directed to be disposed of by a reasoned order within a period of six weeks



from the date of passing of this order.

7. With above observations and directions, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	30.10.2023
Transmission Date	N/A

