

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11627 of 2022

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Vinodanand Mishra S/o- Late Mayanand Mishra, Resident of Bhattpura, Ward No. 4, P.S.- Manigachi, District- Darbhanga, retired as Section Officer, Head Quarter, L.N. Mithila University, Darbhanga.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Vice- Chancellor, Lalit Narayan Mithila University, Darbhanga.
4. The Registrar, Lalit Narayan Mithila University, Darbhanga.
5. The Finance Officer, Lalit Narayan Mithila University, Darbhanga.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr.Shashi Bhushan Singh, Advocate
For the L.N.M.University	:	Mr. Nadim Seraj, Advocate
For the State	:	Mr.Madhukar Mishra, AC to SC-16

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 17-07-2023

Heard learned counsel for the petitioner, learned counsel for the Lalit Narayan Mithila University, Darbhanga and learned counsel for the State.

2. Petitioner, in the present case, is aggrieved by and dissatisfied with the order as contained in letter no. C/PO/15724/22 dated 21.07.2022 (Annexure ‘11’) by which the pay scale of the petitioner which was fixed vide Annexure ‘A/2’ to the writ application has been sought to be revised and a sum of Rs. 6,13,981/- has been shown recoverable from the

petitioner.

3. It is the specific case of the petitioner in paragraph '20' of the writ application that prior to issuance of Annexure '11' no opportunity to show cause was given. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih (White Washer)** reported in **(2015) 4 SCC 334** to submit that the petitioner being a class three employee would not have been subjected to the recovery from his salary and pension. It is pointed out from Annexure '11' that the respondents have calculated a sum of Rs. 3,77,325/- recoverable from the payments made during the period 01.03.1989 to 31.12.2015 and a sum of Rs. 2,36,656/- for the period 01.01.2016 to 31.05.2022.

4. It is submitted that such recoveries beside being without giving an opportunity of hearing to the petitioner, is in the teeth of the judgment of the Hon'ble Apex Court in the case of **Rafiq Masih (White Washer)** (supra).

5. Learned counsel for the University has opposed the writ application. It is submitted that earlier the pay fixation of the petitioner was though done by the statutory pay fixation committee of the University but later on the same was not approved by the pay verification cell of the State Government.

6. Learned counsel for the petitioner has at this stage thrown a challenge to the power of the pay verification cell of the State Government to take any view over the pay fixed by the statutory committee of the University and he has in order to support his contention relied upon the order dated 24.03.2009 passed by this Court in CWJC No. 65/2001 (Patna University Employees Association and others Vs. The State of Bihar and others) as contained in Annexure '7' to the writ application.

7. Attention of this Court has been thrown towards the stand of the Deputy Secretary, Higher Education, in paragraph '4' of the counter affidavit which has been quoted by this Court in its order as contained in Annexure '7'. At the relevant time, the stand of the Deputy Secretary, Higher Education was that the power of pay fixation to the employees of the Universities lies with the pay fixation committee and the department is not concerned in this matter.

8. In the counter affidavit, however, there is no denial of the statements made in paragraph '20' of the writ application to the effect that prior to issuance of Annexure '11' no show cause and opportunity of hearing was given to the petitioner.

9. Having regard to the facts and circumstances of the case, the submissions of the parties and on perusal of the

records, this Court finds that this writ application has to be allowed at this stage on the solitary ground that the impugned order as contained in Annexure '11' suffers from violation of principles of natural justice. The specific statements of the petitioner as contained in paragraph '20' of the writ application has not at all been controverted.

10. In the facts of the present case, had an opportunity of hearing been given to the petitioner, the petitioner would have been able to place before the competent authority his stand and the judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih (White Washer)** (supra) which could have been considered and then a reasoned decision was required to be taken.

11. In the aforesaid view of the matter, this Court is persuaded to quash the communication as contained in letter no. C/PO/15724/22 dated 21.07.2022 as contained in Annexure '11' to the writ application. Consequent upon this quashing, no recovery shall be made from the petitioner, however, it is left open to the respondents to take a fresh view of the matter and in case they are advised to proceed with the recovery, an opportunity to show cause and hearing shall be given to the petitioner. Only after considering the submissions of the

petitioner, an appropriate decision shall be taken by the respondents. All contentions are left open to the parties.

12. This Writ Application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.07.2023
Transmission Date	