

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2713 of 2018

In
Civil Writ Jurisdiction Case No.10870 of 2008

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1. Ganga Prasad Jha S/o Late Buchay Jha Resident of Village - Tumaul, P.O. - Putai, P.S. - Baheda, District - Darbhanga.
 2. Arun Kumar Jha S/o Late Murlidhar Jha Resident of Old Jail Campus, near Sadar Hospital Madhubani, P.O. P.S. District - Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna, namely Mr. Deepak Kumar, IAS.
2. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna, namely Mrs. Sujata Mukharjee IAS.
3. The Principal Secretary, Education Department, Govt. of Bihar, New Secretariat Patna namely Mr. R.K. Mahajan, IAS.
4. The Director, Higher Education Department, Govt. of Bihar, Patna namely Mr. Sushil Kumar.
5. The L.N. Mithila University Darbhanga through its Registrar namely Mr. Nithish Kumar Roy.
6. Dr. S.K. Singh, Vice-Chancellor, L.N. Mithila University, Darbhanga.
7. Binod Kumar, Finance Officer, L.N. Mithila University, Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha, Advocate Mr. Ram Naresh Jha, Advocate Mr. Jitendra Acharya, Advocate
For the State	:	Mr. Shashi Shekhar Tiwary, AC to AAG-15
For the University	:	Md. Nadim Seraj, Advocate Mr. Sunil Kumar Karn, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-08-2024

The present MJC-Contempt petition has been filed for non-compliance of the orders of this Court dated 07.08.2008 passed in CWJC No. 10870 of 2008 read with Hon'ble Supreme



Court decision in the case of **State of Bihar and Anr. vs. Sunny Pandey and Ors** reported in **(2013) 3 SCC 559**.

2. Today, learned counsel for the petitioners restricted his arguments to the extent that petitioners have not been extended ACP benefits and another issue is relating to re-designation of Head Assistant and Accountant of the Colleges as Section Officer at the departmental level. The later issue of re-designation is concerned, the respondents have admitted that Head Assistant and Accountant of the Colleges have been re-designated as Section Officer. Then what remains is whether petitioners are entitled to ACP benefit or not?

3. State Government floated ACP Scheme on 25.06.2003 w.e.f. 05.08.1999 and it was adopted by the University on 04.03.2014 w.e.f. 09.08.1999. The State Government proceeded to amend ACP Scheme on 23.03.2006 and 28.01.2008. The question for consideration in the present MJC-contempt petition is only to the extent that petitioners are entitled to have the benefit of modification of ACP Scheme dated 23.03.2006 read with 28.01.2008 or not?

4. Undisputedly, respondent-University had not incorporated necessary amendment to the statute like initial floating of ACP dated 25.06.2003. This issue has not been raised by the peti-



tioners from the inception to the extent in seeking writ of mandamus to the concerned officials of the University and State to carry out necessary amendment in the statute, insofar as modified ACP Scheme Notification issued by the State Government on 23.03.2006 and 28.01.2008. Even today, they have not requested the concerned University Officials to amend the statute insofar as incorporation of modified ACP Notification of the State Government dated 23.03.2006 and 28.01.2008. Unless and until modified ACP Scheme floated by the State Government is adopted in the manner known to the law under the statute like earlier ACP Scheme notified by the State Government on 25.06.2003 it has been given effect from 09.08.1999 and it has been incorporated in the statute on 04.03.2014 while giving effect from 09.08.1999. When then have adopted Scheme of ACP, there was no reason for not incorporating amended ACP which was notified on 23.03.2006 and 28.01.2008 for these many years. In all fairness, University should have suo moto incorporated in the statute like the initial ACP dated 04.03.2014 while giving effect from 09.08.1999.

5. In view of these facts and circumstances, the present MJC-Contempt petition cannot be adjudicated insofar as ACP benefit to the petitioners are concerned.



6. Learned counsel for the petitioners submitted that petitioners are speculating that ACP benefit from the date of modification of ACP has been extended to the petitioners. In the event of dropping the present MJC-contempt petition, the University is likely to order for re-fixation of pay and difference of amount would be recovered from the petitioners.

7. At this stage, in the absence of any statute insofar as extending benefit under Notification dated 23.03.2006 and 28.01.2008 of the State Government and it is not reflected in the statute extending modified ACP benefit to the petitioners is without authority of law. However, once excess payment is made to the petitioners, the same cannot be recovered. In this regard, the concerned authority may take note of Hon'ble Supreme Court decision in the case of **State of Punjab and others vs. Rafiq Masih (White Washer) and others** reported in **(2015) 4 SCC 334**. The relevant para 18 reads as under:-

"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."

8. The petitioners are at liberty to approach the University officials/State to incorporate modified ACP Scheme of the State Government dated 23.03.2006 and 28.01.2008 in the statute at appropriate place so as to to extend monetary benefits of modified ACP Scheme to the petitioners and other similarly situated persons in view of the fact that University have adopted initial ACP Scheme dated 25.06.2003 which has been given effect from 09.08.1999. It has been incorporated by the University on 04.03.2014 while giving effect from 09.08.1999 in the relevant



statute. If the petitioners approach the University and State in that event University and State may take necessary steps and redress the grievance of the petitioners at the earliest.

9. With the above observations, the proceeding of the present MJC-contempt petition stands dropped.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

