

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7870 of 2015

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- 1.1. Shanti Devi Wife of Late Bal Kishun Sao Resident of Mohalla- West Lohanipur, Railway Handar Road, P.S.- Kadam Kuan, District- Patna.
 - 1.2. Umesh Kumar Keshri Son of Late Bal Kishun Sao Resident of Mohalla- West Lohanipur, Railway Handar Road, P.S.- Kadam Kuan, District- Patna.
 - 1.3. Arun Kumar Keshri Son of Late Bal Kishun Sao Resident of Mohalla- West Lohanipur, Railway Handar Road, P.S.- Kadam Kuan, District- Patna.
 - 1.4. Sanjay Kumar Keshri Son of Late Bal Kishun Sao Resident of Mohalla- West Lohanipur, Railway Handar Road, P.S.- Kadam Kuan, District- Patna.
 - 1.5. Bablu Lumar Keshri Son of Late Bal Kishun Sao Resident of Mohalla- West Lohanipur, Railway Handar Road, P.S.- Kadam Kuan, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Department of Education, Government of Bihar, Patna
2. The Director, Higher Education, Govt. of Bihar, Patna.
3. The Vice Chancellor, Magadh University, Bodh Gaya.
4. The Registrar, Magadh University, Bodh Gaya.
5. The Principal, College of Commerce, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satya Ranjan Sinha, Advocate Ms. Seema Kumari, Advocate Ms. Simran Kumari, Advocate
For the Respondent/state :		Mr. Prabhakar Jha, Adv., GP -27 Mr. Umesh Narayan Dubey, Advocate
For the University	:	Mr. Faiz Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 22-03-2024

1. The petitioner has filed the present writ application for quashing of order dated 16.12.2008 passed by Vice Chancellor, Magadh University, Bodh Gaya directing recovery of the amount of Rs. 2,67,070/- from gratuity and arrears of pension of the petitioner and it has further been prayed for a direction to return the recovered amount.



2. The original petitioner was appointed as Lab Boy on 17.12.1963 in the University. He got promotion on the post of “Sorter”, which was confirmed *vide* Memo No. 1506/CI dated: 18-07-1984. The petitioner worked on the promoted post successfully to the satisfaction of all concerned and retired from the post of Sorter (Library), College of Commerce, Patna on 31.01.2005. The recovery has been ordered from the petitioner on the basis that as per verification of post and pay fixation done by the State Govt. the petitioner got excess payment of Rs. 267070/- during his service tenure from 01.03.1989 to September, 2002.

3. Learned counsel for the petitioner submits that petitioner after retirement has died and his legal heirs have been substituted. Insofar as grant of promotion is concerned, the petitioner is not challenging its validity, however, submission of learned counsel for the petitioner is that since the petitioner has worked successfully on the promotional post as such the order of recovery is bad in law. The said amount has already been recovered by the University. He relies upon a judgment of a Co-ordinate Bench of this Court reported in 2017(4) PLJR 248 Saranga versus Nagar Parishad, Siwan through its Executive Officer & Ors.



4. Learned counsel for the Magadh University as well as State jointly submit that since promotion granted to the petitioner was not in accordance with the provision of the rules, as such, order of recovery has been passed by the learned Vice-Chancellor.

5. I have heard learned counsel for the parties. The only point which requires determination is as to whether order of recovery after retirement of the petitioner on the ground that petitioner was not granted promotion in accordance with the rules is valid or not.

6. The Hon'ble Supreme Court in the case of State of Punjab and Others *versus* Rafiq Masih reported in (2015) 4 SCC 334 as well as a recent judgment rendered in the case of Thomas Daniel *versus* State of Kerala reported in AIR 2022 SC 2153 has laid down the law regarding recovery.

7. In Rafiq Masih Case (Supra), the Supreme Court has held in paragraph nos. 8 & 18 as follows:-

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be



compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

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 Supreme Court, in paragraph no. 11 of Thomas Daniel (Supra) has taken note of a judgment of the Supreme Court in the case of Col. B.J. Akkara (Retd) v. Government of India and others reported in (2006) 11 SCC 709 and quoted paragraph no. 28 of Col. B.J. Akkara (Supra) which speaks that relief against the recovery, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not



grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

9. I have heard learned counsel for the parties and have gone through the material on record including the impugned order. It is not the case of the respondents that the petitioner at any point of time misrepresented before the authorities warranting them to promote the petitioner on the higher post of “Sorter”. It is also true that the post of “Sorter” is a Class- III post and petitioner continued to discharge his duties on the promotional post for about twenty one years and retired on 31.01.2005. The time period for which the petitioner has worked on the post of “Sorter” is fairly long.

10. This Court is of the opinion based upon the facts of the case that effect of recovery from death- cum- retiral benefits of the petitioner payable to the widow would be unfair, wrongful, improper and unwarranted as equity lies in favour of the petitioner inasmuch as he discharged his duties satisfactorily for those twenty one years without any complaint whatsoever from any quarters.

11. In the result, the impugned order dated 16.12.2008 is set aside.



12. The respondent / Magadh University, Bodh Gaya is directed to refund the recovered amount of Rs. 2,67,070/- to the wife of deceased employee i.e. petitioner - 1.1 (Shanti Devi) within a period of one month from the date of receipt / production of a copy of this order.

13. With the aforesaid observation and direction, the present application is disposed of.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27-03-2024
Transmission Date	NA

