

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13591 of 2022

=====

Shambhu Sharan Prasad, S/o Late Awadesh Prasad, R/o of Rajsipahi Lane, LNMU Campus, Darbhanga, P.S.- University, District- Darbhanga, presently residing in Flat No. 103C, Aparna Mansion Society, Near Khatal of Sri Uday Jee, Durga Mandir, Birla Colony, Phulwarisharif, Patna, P.S.- Phulwari, District- Patna, Mb. No.- 9334849483.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Deptt. of Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Deptt. of Education, Govt. of Bihar, Patna.
3. The Principal Secretary, Deptt. of Finance, Govt. of Bihar, Patna.
4. Lalit Narain Mithila University through its Vice- Chancellor and the Registrar, Darbhanga.
5. The Vice- Chancellor, Lalit Narain Mithila University, Darbhanga.
6. The Registrar, Lalit Narain Mithila University, Darbhanga.
7. The Finance Officer, Lalit Narain Mithila University, Darbhanga.

... .. Respondent/s

=====

Appearance :

Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar Sinha, with Mr. Arvind Kumar Sharma, and Mr. Chetan Kumar, Advocates
For the Respondent/s	:	Mr. Jitendra Kr. Roy 1, SC-13
For the LNMU	:	Mr. Bindhyachal Rai, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 03-07-2025

Heard the parties.

2. The petitioner is aggrieved with the letter as contained in Memo No. 10379/22 dated 25.01.2022 (Annexure-5) issued under the signature of the Registrar of the Lalit Narain Mithila University (hereinafter referred to as 'the LNMU), Darbhanga whereby it has been informed to the head of the Post



Graduate (PG) Geography Department, LNMU, Darbhanga that a sum of Rs.27,60,601/- recoverable from the petitioner, which is said to have been paid in excess to his entitlement on account of difference in the pay scale. The impugned order came to be issued, based upon the report of the Pay Verification Cell of the Government of Bihar, who treated the services of the petitioner as Typist instead of Assistant.

3. The short facts, which led to the filing of the present writ petition, are that the petitioner was initially appointed on the post of Typist under the notification contained in Memo No. 111/81/EC dated 25.12.1981 issued under the signature of respondent no.6. Subsequently, vide Office order contained in Memo No. 14693-701, dated 30.03.1987, the post of Typist/Typist-cum-Accountant re-designated as Typist-cum-Assistant and accordingly the post of the petitioner along with five others were re-designated as Typist-cum-Assistant with effect from the date of their initial appointment. Since the petitioner had submitted his joining on the post of Typist on 04.01.1982, his appointment of Typist-cum-Assistant made effective with effect from 04.01.1982 in the corresponding revised scale of pay of Rs.785-1210/-. Some dispute has arisen with regard to the re-designation of the post of Typist to the post



of Assistant and the matter has come up for consideration before this Court in C.W.J.C. No. 10097 of 1997. The above mentioned writ petition came to be disposed of vide order dated 18.01.1999 wherein the Court held that the petitioners are entitled to get the pay scale of Rs.1640-2900/- as Assistant, which they were getting for the last several years and further directed to ensure payment of difference of pay in accordance with law.

4. It would be pertinent to notice that the order dated 18.01.1999 stands modified vide order dated 14.09.2000 passed in M.J.C. No. 947 of 2000 to the extent that the writ petitioners were held entitled to the salary in the scale of Rs.1500-2750/-.

5. In pursuant to the order aforementioned, the University has come out with a notification vide Office order, as contained in Memo No. 3345-3400/2002 dated 20.03.2002 and the petitioner and other identically situated persons have been allowed the pay scale of Assistant with effect from the date of joining. The petitioner has also been allowed the arrears of difference of pay admissible to the post of Assistant, as also the consequent revised scale of pay to the 6th Pay Revision. The petitioner discharged his duty as an Assistant in the different offices of the University and finally superannuated on



30.11.2021 from the PG Department of Geography in the pay scale of Rs.98,700/- duly certified by the Finance Officer of the LNMU, Darbhanga, which pay was admissible to the post of Assistant.

6. All of a sudden, when the record was sent for verification at the level of the Pay Verification Cell of the State Government, some objection has been raised and the services of the petitioner treated as Typist and consequently impugned order came to be passed directing for recovery of a sum of Rs.27,60,601/- from the different heads of the retiral benefits.

7. Mr. Pramod Kumar Sinha, learned Advocate for the petitioner while assailing the impugned order has contended that the designation of the petitioner as Typist had been acknowledged as Typist-cum-Assistant with effect from the date of his joining and since then the petitioner has been allowed the corresponding pay scale of the Assistant. The issue with regard to the entitlement of the pay scale of the petitioner and others as Assistant has already been set at rest by a Bench decision of this Court in CWJC No. 10097 of 1997 long back in the year 1999 and thus it cannot be reopened after two decades. Moreover, all the exercise in favour of the employees, including the petitioner, were carried out by the authorities of the LNMU, Darbhanga



and at no point of time, there had been any misrepresentation on the part of the petitioner. Any recovery from the retiral benefit of the petitioner, who had been holding the Class-III post would be in complete defiance of the mandate of the Hon'ble Supreme Court in the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.*, reported in, (2015) 4 SCC 334.

8. Learned Advocate for the petitioner further urged that the action of the respondent University directing for recovery of the entire retiral benefits, based upon the report of the Pay Verification Cell of the State Government is wholly illegal and untenable in the eyes of law, apart from being violative of Articles 14 and 300A of the Constitution of India, as also in the teeth of the principles of natural justice. The petitioner has never been served with any notice or opportunity of hearing before the impugned order came to be passed.

9. Mr. Bindhyachal Rai, learned Advocate for the LNMU, Darbhanga has submitted that all the calculation of pre and post retiral benefits/dues were made on the basis of pay slip received from the Pay Verification Cell, Patna. On calculation, a sum of Rs.13,91,891/- towards gratuity and Rs.8,29,240/- towards earned leave was found payable to the petitioner. However, on calculation, a sum of Rs.27,60,601/- was found to



be paid in excess, which was to be recovered, hence, the payable amount towards retiral dues for a sum of Rs.22,21,131/- was adjusted against the recovery and an amount of Rs.5,39,470/- was ordered to be recovered from the pensionary benefits of the petitioner. Learned Advocate for the University further urged that any amount to an employee either pre-retiral or post retiral shall be paid only on the basis of pay slip of Pay Verification Cell. Payment of excess amount to the entitlement, would be certainly misappropriation of public money.

10. A detailed counter affidavit as well as supplementary counter affidavit came to be filed on behalf of respondent no.2. Referring thereto Mr. Jitendra Kumar Rai, learned Advocate for the State vehemently contended that the petitioner was admittedly appointed on the post of Typist in the pay scale of Rs.244-350/-, as is evident from the notification contained in Annexure-1 to the writ petition. The said pay scale has been assigned to Typist Class-2, which is evident from the pay revision of non-teaching staff of the University and Colleges as contained in letter dated 12.08.1974, the copy of which is marked as Annexure-R/A. There is no post by name of Typist-cum-Assistant in existence, which is also evident from the different documents showing revision of the pay scale of the



non-teaching staff of the University/Colleges. The post of Typist and Assistant are separate and distinct, hence in no circumstance it can be treated as one. It is further contended that the post of Typist required some additional qualification whereas the post of Assistant does not, hence these two posts cannot be equated. The admissibility of the pay scale was duly considered by the Pay Verification Cell and taking note of the fact that the petitioner was appointed as Typist, he has been accorded the corresponding pay scale and its revision and after calculation it has been found that the petitioner has received excess salary to the tune of Rs. 27,60,601/-. It is lastly contended that the Pay Verification Cell constituted by the Government of Bihar is assigned the duty to verify the entitlement of an employee, based upon their service record and the University is obliged to act accordingly on the basis of pay slip issued by the Pay Verification Cell.

11. This Court bestowed an in depth consideration to the submissions set forth by the learned Advocate for the respective parties and also perused the materials available on record.

12. The facts are admitted and not been disputed by any of the parties, inter alia, to the extent that the post of



Typist/Typist-cum-Accountant was re-designated as Typist-cum-Assistant with the corresponding revised scale of pay. The dispute cropped up on account of re-designation of the post of Typist to the post of Assistant when the same was resisted by the respondent State, which led to filing of C.W.J.C. No. 10097 of 1997.

13. The Court having noted the facts that the petitioners have been extended the pay scale of Assistant for about 18 years and after such continued grant of pay scale of Assistant, it is no longer open to the respondent University to deprive the petitioner of such pay scale on the basis of some audit objection. Moreover, the replacement scale for the post of Assistant has never been recalled, hence the Court held that the petitioners are entitled to get the admissible pay scale for the post of Assistant, which they were getting for the last 18 years from 1978.

14. The order aforementioned attained finality, as it has never been questioned or assailed before any higher forum or Court. However, it would be suffice to note that a modification application came to be filed to modify the judgment/order dated 18.01.1999 passed in C.W.J.C. No. 10097 of 1997 only on the premise that the pay scale has been inadvertently wrongly



mentioned. The order mentioned above duly accepted and executed in its letter and spirit by extending the pay scale of Assistant to the petitioner and others. Once a dispute came to be settled long back in the year 1999 can it be reopened after two decades when the employees have already superannuated, in the opinion of this Court is wholly unjustified and untenable. Any order reducing the position of the petitioner, which is based upon an order of this Court would besides tantamount to defiance of the order, is a move to over overreach the order of this Court unless the said order is modified or over turned by the higher Court.

15. It is well settled that the dispute which have already been settled, under the order of this Court long back, cannot unsettle in such a casual and cavalier manner, without getting the order modified or overturned that too when the relationship of the employee and the employer on account of superannuation has already severed.

16. This Court has also taken note of the specific averments made in the rejoinder to the counter affidavit filed on behalf of respondent no.2 wherein specific contention has been made by the petitioner that the respondent University re-designated the post of Typist as Assistant of altogether 22



employees, including the petitioner with effect from the date of their initial appointment in pursuant to a Bench order of this Court in C.W.J.C. No. 10097 of 1997 filed by identically situated employees and surprisingly all except the petitioner and one another Ramudar Singh have been allowed pensionary benefit on the basis of their scale of pay attached to the post of Assistant instead the post of Typist, as has been done in the case of the petitioner.

17. The Apex Court in the case of **Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors**, reported in (2009) 3 SCC 475 ruled that when the excess unauthorized payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment has been made for a long duration of time, it would be iniquitous to make any recovery. While holding so, the Hon'ble Supreme Court held as follows:

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is



subsequently found to be erroneous.

58. *The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] , Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967], V. Gangaram v. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652], Col. B.J. Akkara (Retd.) v. Govt. of India [(2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529], Purshottam Lal Das v. State of Bihar [(2006) 11 SCC 492 : (2007) 1 SCC (L&S) 508], Punjab National Bank v. Manjeet Singh [(2006) 8 SCC 647 : (2007) 1 SCC (L&S) 16] and Bihar SEB v. Bijay Bhadur [(2000) 10 SCC 99 : 2000 SCC (L&S) 394].”*

18. When the issue of recovery from the Class-III and Class-IV employees were wreck up in various cases, in order to put a quietus, the Hon’ble Supreme Court in the case of **Rafiq Masih** (supra) has been painstakingly postulated some of



the situations of the hardship wherein recovery by the employee would be found impermissible in law.

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.”

19. The Hon'ble Supreme Court emphasizing the aforenoted proposition held that no recovery can be made from the retired employees belonging to Class-III and Class-IV, or the employees who are due to retire within one year, of the order of recovery and when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

20. In the case of **Thomas Danial Vs. State of Kerala and Others**, reported in **2022 SCC OnLine SC 536**, the Hon'ble Supreme Court also held that in a case where an employee has been accorded extra increment and the same has been paid for a period of more than ten years or more, the State cannot recover the excess amount paid to the employee.

21. It is also admitted position that the petitioner has neither been placed on notice at the first instance or any point of time during service that he has been allowed higher pay scale after settlement of the issue by a Bench of this Court and/or before the impugned order came to be passed.



22. It would also be pertinent to note here that the learned Division Bench of this Court in the case of **Jagdish Prasad Singh Vs. State of Bihar and Others [2024 SCC OnLine SC 1909]** while considering the challenge to the order passed by the learned Single Judge, who did not interfere in the order reducing the pay scale, while allowing the appeal held that the order of recovery of excess amount from the appellant is grossly illegal and arbitrary and directed that the appellant shall continue to receive pension or early pay scale. The relevant extract of para. 26 of the judgment is quoted hereinbelow:

“26. The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he had been promoted as an ADSO, while drawing the pay scale of Rs.6500-10500 applicable to the post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The impugned action directing reduction



of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be sustained.”

23. This Court also cannot lose sight of the fact that the petitioners before this Court is a Class-III employee, superannuated on 30.11.2021 and thus any recovery from the pensionary benefit of the petitioner or from his pension account would be inequitable and against the mandate of the Hon’ble Supreme Court in the case referred to hereinbefore.

24. In view of the discussions made hereinabove, as also settled position of law this, Court finds that the impugned order, as contained in Memo No. 10379/22 dated 25.01.2022, is not tenable in the eyes of law. Accordingly, the same is hereby quashed.

25. The respondent authorities are directed to ensure the payment of all admissible pensionary benefits and other dues by treating the services of the petitioner as Assistant in the light of the order passed by this Court in C.W.J.C. No. 10097 of 1997 as has been accorded to other identically situated persons, preferably within a period of twelve weeks.

26. The writ petition stands allowed. The parties shall bear their own costs.



27.Pending application(s), if any, stand(s) disposed
off.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.07.2025
Transmission Date	NA

