

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19030 of 2021

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Dinesh Pathak son of Late Abhay Kant Pathak resident of Village- Dhanauja,
Post Lorika, P.S.- Benipatti, District- Madhubani, presently posted as Store
Keeper, K.V.S. College, Uchchaith, Benipatti, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Higher Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Higher Education, Govt. of Bihar, Patna.
3. The Vice Chancellor, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga.
4. The Registrar, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga.
5. The Finance Officer, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga.
6. The Principal, K.V.S. College, Uchchaith, Benipatti, District Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shashi Bhushan Singh, Advocate.
For LNMU	:	Mr. Md. Nadim Seraj, Advocate.
		Mr. Shailesh Kumar, Advocate.
For the State	:	Mr.Madhaw Pd. Yadaw, GP-23.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 24-04-2025

Heard Mr. Shashi Bhushan Singh, learned counsel
appearing on behalf of the petitioner; Mr. Md. Nadim Seraj,
learned counsel along with Mr. Shailesh Kumar, learned counsel
appearing on behalf of the Lalit Narayan Mithila University and
Mr. Madhaw Prasad Yadaw, learned GP-23 for the State.

2. The petitioner in paragraph no. 1 of the present
writ petition has sought, *inter alia*, following relief(s), which is
reproduced hereinafter:-



“(i) For issuance of an appropriate writ in the nature of Certiorari for quashing letter No. C/CC/10792/21 dated 25.9.2021 whereby and whereunder the Finance Officer of the University has issued a letter for recovery of Rs. 5,23,853/- from the petitioner treating him Routine Clerk in place of Store Keeper, particularly when the University has made rectification in its mistake and after treating the petitioner as Store keeper made fixation of pay scale in the year 1989 and started payment thereupon and now the aforesaid letter of recovery has been issued.

(ii) For issuance of an appropriate writ in the nature of Mandamus, Commanding and directing the respondent authorities to treat the petitioner as Store Keeper and grant him benefit of ACP & MACP in the light of judgment passed in Civil Appeal No. 516/2013 (State of Bihar V/s Sunny Prakash) and grant all consequential benefit thereupon.

(iii) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner shall be found entitled under the facts and circumstances of the case.”

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner is aggrieved by the Letter No. C/CC/10792/21 dated 25.9.2021 whereby the Finance Officer of the University has issued a letter for recovery of Rs. 5,23,853/- from the petitioner treating him Routine Clerk in place of Store Keeper, particularly when the University has rectified its mistake and after treating the petitioner as Store keeper made fixation of pay scale in the year 1989 and started making payment thereupon. Learned counsel further submits that the concerned respondents be directed to treat the petitioner as Store Keeper and grant him benefit of ACP & MACP in light of the judgment passed in Civil Appeal No. 516/2013 (State of Bihar V/s Sunny Prakash) and grant all consequential benefits.



Learned counsel further submits that the petitioner is aggrieved by the action of the University with regard to calculation of pre & post retiral dues of the petitioner, by which a sum of Rs. 1,74,340/- has already been recovered from the salary of September 2021 and October 2021 and rest amount of Rs. 3,49,513/- has been directed to be recovered on receipt of rectified pay-slip and on final calculation of pre and post retiral dues. Learned counsel submitted that the petitioner has not committed any misappropriation or misrepresented, rather the respondent have fixed the pay scale of the petitioner, as such, after his retirement, the same cannot be recovered. Learned counsel submits that recovery after retirement from Class-III and Class-IV grade employee has been deprecated by the Apex Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer)** reported in **(2015) 4 SCC 334**.

4. *Per contra*, Mr. Shailesh Kumar Singh, learned counsel appearing on behalf of the University submitted that incorrectly pay slip of the petitioner was sent on the basis of pay applicable to the Store Keeper, which was rectified and subsequently, in view of the fact that the petitioner was absorbed as an Upper Division Clerk, based on the pay scale applicable to the Routine Clerk / Upper Division Clerk, the petitioner has



been paid the terminal benefits under different heads as has been mentioned in Para-8 of the counter affidavit. Learned counsel further refers the statement made in Para-7 of the counter affidavit that a sum of Rs. 1,74,340/- has already been recovered and rest amount of Rs.3,49,513/- is to be recovered after rectifying the pay slip subject to final calculation of pre and post retiral dues. Learned counsel further submitted that the pay slip received earlier in the office from the PVC was incorrect as reported by the Section concerned and as such calculation giving benefits of ACP/MACP was not made earlier awaiting the rectified pay slip from the PVC. Learned counsel further submitted that service of the petitioner has rightly been absorbed on the post of Upper Division Clerk and the University never treated the service of the petitioner as Store Keeper.

5. Heard the parties.

6. Having considered the rival submissions made on behalf of the parties, as well as, the pleadings and information contained in the writ petition and the counter affidavit, I find that the petitioner has brought on record the statement showing the pay scale of N. T. Staff of K.V. Science College, Benipatti, Madhubani as per the University Memo No. 19680-753 dated 19.10.1989 giving the benefit of merger of



scale, wherein details of name of the employee, designation, date of appointment, merger of scale, pay and DA as on the date of take over i.e. 08.12.1980/31.03.191 have been mentioned. Name of the petitioner appears in the said memo and he has been found to be Store Keeper reflecting his date of absorption to be 01.04.1985 and accordingly revised pay scale has been mentioned as 730-1080 w.e.f. 01.04.1985. I find that the said Memo No. 19680-753 dated 19.10.1989 has not been controverted by the respondent – University in their counter affidavit rather have admitted that the petitioner was absorbed on 01.04.1985, however, his service was treated as Routine Clerk / Upper Division Clerk for the period from 01.03.1989 to 28.02.2019, which led to recovery of a sum of Rs. 5, 23, 853/-, which was, according to the respondent – University , paid in excess. As such, a sum of Rs.1,74,340/- for the said period has been recovered from of the salary of September 2021 and October 2021 and rest amount of Rs. 3, 49, 513/- is to be recovered on the basis of the rectified pay scale. The respondents – University have not controverted the fixation of salary in respect of the petitioner which has been issued vide Memo No. 19680-753 dated 19.10.1989 under the Authority of the Registrar of the University and his seal and signature. The



petitioner retired on 31.10.2021 and rectified pay slip has been issued after his retirement. In the present case, the petitioner is aggrieved by the action of the University, in so far as, the University has proceeded to fix the pay scale of the petitioner on the post of Routine Clerk and after his retirement has proceeded to recover a sum of Rs. 5,23,853/- from the petitioner.

7. The law in respect of recovery from Class-III and Class-IV employees is no more *res integra*. The Apex Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer)** reported in **(2015) 4 SCC 334**, has laid down the principle of recoveries from Class-III and Class-IV employees, and issued the guidelines in paragraph no.18, which are reproduced hereinafter:

“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 herein above, we may, as a ready reference, summarise the following few situations. wherein recoveries by the employers, would be impermissible in law:

i. Recovery from employees belonging to Class III and Class IV service (or Group C or Group D service)

ii. Recovery from retired employees, or employee who are due to retire within one year, of the order of recovery.

iii. Recovery from employees, when the excess payment has been made for period more than 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 the case of **Sahib Ram v. State of Haryana and Others**, reported in **1999 Supp (1) SCC 18**, has restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order by the authority concerned, without any misrepresentation on part of the employees by making following observations:

"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."



9. It is not a case that the petitioner has misrepresented rather the authorities of the University themselves have committed mistake for which the petitioner should not be penalized.

10. In light of the law laid down by the Apex Court in the case of **Rafiq Masih (supra)** and **Sahib Ram (supra)**, no recovery can be made from a Class-III employee, who has not committed any misappropriation or misrepresented, when the incorrect fixation is on the part of the University, the order contained in Letter No. C/CC/10792/21 dated 25.09.2021 (Annexure-18) is hereby set aside and quashed.

11. The University is directed to rectify its action on the basis of the records available taking into consideration the Memo No. 19680-753 dated 19.10.1989, expeditiously.

12. The writ petition stands allowed.

13. There shall be no order as to costs.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.04.2025
Transmission Date	NA

