

(2008) 12 JH CK 0023
Jharkhand High Court
Case No: None

Dr. Banshidhar Sharma

APPELLANT

Vs

Birsa Agriculture University and
Others

RESPONDENT

Date of Decision: Dec. 18, 2008

Citation: (2009) 2 JCR 364

Hon'ble Judges: R.R. Prasad, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

R.R. Prasad, J.

When the case was taken up on 1.12.2008, it was adjourned for today, at the instance of the respondent-University for filing counter affidavit. But while granting adjournment, it was made clear that if the counter affidavit is not filed by the next date, the matter shall be disposed of, on the basis of the materials available on the record. In spite of that no counter affidavit has been filed.

2. Accordingly matter was heard.

3. Learned Counsel appearing for the petitioner submits that the petitioner got retired on 11.3.1993 as "an Associate Professor" from Veterinary College, Birsa Agriculture University, Ranchi and was being paid Pension, but all on a sudden, after fifteen years of his retirement, the University has issued a letter vide Memo No. 918 dated 26.2.2008. whereunder it has been communicated that the petitioner has already drawn a sum of Rs. 1,13,155/- as pension in excess, which needs to be deposited by the petitioner, failing which Rs. 3,000/- would be recovered per month from the amount of the pension of the petitioner and in fact, the Authority has already started deducting Rs. 3,000/- per month from the amount of the Pension, which is quite illegal, as the respondent does not have authority to deduct the amount of pension in absence of any adverse order in terms of the provision as

contained in Rule 43(b) of the Bihar Pension Rules, 1950, which proposition of law gets reflected from the decision rendered in the case of [The State of Jharkhand and Others Vs. Padmalochan Kalindi and Another](#), and hence order, as contained in Memo No. 918 dated 26.2.2008 (Annexure-2), is fit to be quashed.

4. At the outset it be stated that the matter relating to Pension of the petitioner being a member of the Staff of the University shall not be governed by the provisions of the Bihar Pension Rules rather it would be subjected to statute, if any, framed under the Bihar Agricultural University Act relating to grant of retirement benefit to the employees. But nothing was placed before me permitting the employer to withhold the amount of pension or to recover that amount which is said to have been drawn in excess. In the instant case, the University has passed an order for adjusting Rs. 3,000/- per month from the amount of the pension of the petitioner as the petitioner has been alleged to have drawn Rs. 1,13,155/- in excess as pension but that amount in absence of any provision either in statute or regulation empowering the authority to recover the same, cannot be recovered after 15 years of retirement, from the amount of pension of the petitioner. That apart nothing appears to be on record that the petitioner was allowed to draw the amount of Rs. 1,13,155/- allegedly in excess on account of any misrepresentation on the part of the petitioner. In that view of the matter also the authority of the University in view of the ratio laid down by Hon'ble Supreme Court in case of [Sahib Ram Vs. State of Haryana and Others](#), is not entitled to recover the same.

5. In that view of the matter, order, as contained in Memo No. 918 dated 26.2.2008 (Annexure-2), is hereby quashed. Consequently, whatever amount has been deducted from the petitioner's pension, that needs to be returned to the petitioner. Accordingly, the respondent No. 2 the Controller Birsa Agriculture University, Kanke, Ranchi, is directed to return the amount, which has already been deducted from the petitioner's pension.

6. With these observations and directions, this writ petition is disposed of.