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HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 6906 of 2026

Sanjay Kumar

.....Petitioner(s)

Versus

The State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Kailash Prakash Pandey
Counsel for Respondent(s)	:	C.S.C.

Court No. - 6

HON'BLE PRAKASH PADIA, J.

1. The order dated 29.03.2025 passed by the Deputy Commissioner of Police (Cyber) Commissionerate Gautam Budh Nagar/respondent No.3 by which the salary of the petitioner has been revised and order of recovery has been passed is under challenge.

2. It is argued by learned counsel for the petitioner that by the aforesaid order, salary of the petitioner has been revised from 01.12.2008. It is argued that the petitioner has been retired from the post of Sub Inspector Civil Police on 31.08.2025. It is argued that the before passing the aforesaid order, no notice or opportunity of hearing has been provided to the petitioner. It is argued that recovery could not be sought from the petitioner for excess payment made during service period after lapse 17 years back. It is argued that nothing has been stated in the order impugned that any fraud or misrepresentation has been made by the petitioner at any point of time or at the time of re-fixation of the pay scale.

3. Learned counsel for petitioner has relied upon judgment rendered by Hon'ble the Supreme Court in ***Sushil Kumar Singhal v. Pramukh Sachiv Irrigation Department and others reported in (2014)16 SCC 444:2014(2) ESC 271 (SC)*** in which Hon'ble the Supreme Court was seized of a similar dispute and placing reliance on Government Order dated 16.01.2007 has held that if any mistake had been committed in pay fixation prior to retirement then by virtue of Government Order dated 16.01.2007 neither any salary paid by mistake could have been recovered nor pension could have been reduced since records of 34 months prior to

superannuation only could be examined for the purpose of grant of pension.

4. The aforesaid facts have not been disputed by learned Standing Counsel.

5. Recently the Hon'ble Apex Court in the case of ***Thomas Daniel vs. State of Kerala & Ors. (Civil Appeal No.7115 of 2010) reported in 2022 Supreme(SC) 387 decided on 02.05.2022*** held that the state cannot recover the excess amount paid to employees. In this aspect of the matter the paragraph-21 of the judgment delivered by the The Hon'ble Apex Court in the case of ***Jagdish Prasad Singh vs. State of Bihar and others reported in (2024) 8 SCR 377*** also important to note down which reads as follows:-

"21. We firmly believe that any decision taken by the State Government to reduce an employees pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. In the case of Syed Abdul Qadir and Others V. State of Bihar and others, this Court held 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 had been made for a long duration of time, it would be iniquitous to make any recovery. The relevant paras of the Syed Abdul Qadir (supra) are extracted herein below: -

"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.

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made. (emphasis supplied)."

6. There has been recurring and troubling pattern that retired employees are compelled to approach the Court because their pension, gratuity and other retiral benefits are either withheld or unnecessarily delayed by Administrative Authority. It is an accepted position that gratuity and pension are not bounties and employee earns these benefits by dint of long continuous faithful and unblemished service as was held in the case

of ***D.S. Nakar vs. Union of India reported in (1983) 1 SCC 305***. It is a hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without due process of law as per Article 300 as was held in State of ***Jharkhand vs. Jitendra Kumar Srivastava reported in (2013) 12 SCC 210***.

7. Retired employees are compelled to engage in prolonged litigation merely to receive their lawful pension and gratuity, their dignity and their financial security is severely compromised. Article 21 of the Constitution of India which guarantee the right to life with dignity also extends to individuals in their old age. In the case of ***Ashwani Kumar vs. Union of India reported in (2019) 2 SCC 636***, it was held that there cannot be any doubt that the right to life with dignity is a part of right to life as postulated in Article 21 of the Constitution of India. Such a right would be rendered meaningless if aged person does not have the financial means to take care of his basic necessity and has to depend for it on others.

8. In this view of the matter, the Court is of the prima facie opinion that the order impugned by the respondent No.3 is per se illegal and against the provisions of law, hence the same is liable to be set aside and is hereby set aside.

9. The writ petition is allowed. Deputy Commissioner of Police (Cyber) Commissionerate Gautam Budh Nagar/respondent No.3 is directed to provide all the benefits namely payment of pension to the petitioner on the basis of last pay drawn by him at the time of his retirement w.e.f. October, 2025. The reduced pension which has been paid to the petitioner after his retirement till April 2026 be also released in his favour within a period of three weeks from the date of receipt of certified copy of this order.

(Prakash Padia,J.)

May 7, 2026

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