IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2561 of 2014

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Shyam Lal Singh Son Of Late Kushal Singh Resident Of Village + P.O. Choubey, P.S. Barkatha, District - Hazaribagh (Jharkhand), Presently C/O Ramchandra Yadav Residing At Mohalla - Bangalipar, P.S. + District - Sheikhpura

.... Petitioner/s

Versus

1. The State Of Bihar, Through Additional Secretary Finance Department (Pay Fixation Branch, Bihar, Patna)
2. The Additional Secretary Finance Department Pay Fixation Branch Bihar, Patna
3. The Director Raj Bhasha Department, Bihar, Patna
4. The Senior Superintendent Of Police, Sheikhpura
5. The Deputy Superintendent Of Police, (East), Sheikhpura
6. The Treasury Officer, Sheikhpura
7. The District Accounts Officer, Pay Finance Department Munger

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Devendra Prasad Singh, Adv
For the Respondent/s : Mr. GP21- Sanjay Pandey & Mr. Vivek Anand Amitesh AC to GP-21

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

5 16-02-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application, now in view of the subsequent development is to refund sum of Rs. 3,45,007/-, which has been deducted from his gratuity amount on the ground that such amount was paid in excess to the petitioner while he was continuing in service by way of yearly increments and the allowances paid thereon.

3. Learned counsel for the petitioner, has assailed the aforementioned decision on two grounds. Firstly, he submits that the petitioner was merely a constable which having a class four post was not required to pass Hindi Noting and Drafting Examination so as to become liable for being subjected to recovery of all the increments which were sanctioned to him during his service period and from that, huge amount of Rs. 3,45,007/-, from his gratuity on the ground of its being excess payment. He has further submitted that in any event such recovery has been made without giving notice and/or opportunity of hearing to the petitioner and explains that if such liberty would have been given to the petitioner, he could have shown that the petitioner on account of the allotment of work and duty as a constable was never required to read and write while discharging his official duty and as such was not even required to pass Hindi Noting and Drafting Examination.

4. Learned counsel for the State on the other hand

having relied on the judgment of this Court in the case of Bhola Yadav vs the State of Bihar & Ors reported in 2002 (4) PLJR 863, has submitted that it has already been decided that even a constable was required to pass Hindi Noting and Drafting Examination. He further submits that in view of statutory 1968 Rules laying down passing of Hindi Noting and Drafting Examination to be compulsory and its consequence also mentioned in the Rule by way of deprivation of yearly increments till passing of the Hindi Noting and Drafting Examination, the total amount of increments granted to the petitioner, contrary to the provisions of the Rules leading to excess of payment from the service career, could be recovered and that is how such recovery has been made during the period of pension fixation of the petitioner from his amount of gratuity.

5. In the considered opinion of this Court, there would be two important aspects on the basis of which this writ application has to be decided. Firstly, if the

petitioner was to be subjected by way of recovery from his gratuity any amount on the ground of its being excess payment made during his service career, the authority doing so was required to give a show cause notice and/or opportunity of hearing. The petitioner however has never been informed by any other authority and in fact whatever has come on record in the writ application will go to show that upon sending Service Book of the petitioner, office of the Accountant General had raised certain objection as with regard to the petitioner not passing Hindi Noting and Drafting Examination and after the authorities had failed to explain satisfactorily to the officials of the Office of the Accountant General they had passed the order of recovery of the alleged excess amount on the ground that the petitioner had not passed Hindi Noting and Drafting Examination. Thus, it becomes absolutely clear that the petitioner was never given any notice and/or opportunity of hearing before passing the impugned order of recovery of alleged excess amount.

6. Plea of violation of the principles of natural justice apart, the respondents were also under an obligation to consider the aspect of the petitioner of not passing the Hindi Noting and Drafting Examination and the alleged excess payment made to him. Such decision has again two facets, namely, recovery of excess amount as well as fixation of pension as per the last entitlement of the petitioner without the benefit of annual increments. In other words, whatever last salary may have been drawn by the petitioner at the time of his superannuation in the year 2011, that could have been reduced to by taking away the amount of increments of course only after complying the principles of natural justice for making the petitioner entitled to the amount of pension and gratuity on the basis of last pay to be fixed without benefit of yearly increments.

7. The other equally crucial aspect as with regard to recovery of excess amount from the petitioner after

his retirement was again required to be examined because the petitioner never had made any misrepresentation while earning his annual increments that he had passed Hindi Noting and Drafting Examination.

8. The Apex Court in the case of ***Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.*** reported in ***2012(8) SCC 417,*** wherein after considering all the earlier judgments including the case of ***Syed Abdul Quadir Vs. State of Bihar*** reported in ***2009(3)SCC 475,*** has explained this aspect very carefully that though it cannot be set by a rule of thumb that recovery can never be made of excess amount from the salary or other payable amount to an employee if it was not admissible to him but then in this case also exception has been carved out as with regard to retired employees. The Supreme Court in this regard had held as follows:-

> *"**13.** We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials*

establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.

14. *We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.*

15. *We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir(supra) and in the case of Col. B.J. Akkara vs Govt. of India reported in 2006 (11) SCC 709, the excess payment made due to wrong/irregular pay fixation can always be recovered."*

(underlining for emphasis)

9. In that view of the matter, this Court would direct the Superintendent of Police, Sheikhpura to issue a show cause notice to the petitioner for explaining that the petitioner was required to pass Hindi Noting and

Drafting Examination and that in absence thereof, the amount of increments earned by him from his service career was an excess amount liable to be recovered. The petitioner on receipt of such notice thereafter shall file his show cause reply, which would be followed by passing of a reasoned order considering the defence taken by the petitioner in such show cause reply filed by the petitioner. If the Superintendent of Police, Sheikhpura finds the petitioner a Constable was required to pass Hindi Noting and Drafting Examination and further would hold that the petitioner's payment of salary with the benefit of increment was contrary to the Rules relating to passing of Hindi Noting and Drafting Examination, he will fix the last pay notionally without the benefit of increments earned by the petitioner and that last pay shall become the basis for the purposes of payment of pension, gratuity and leave encashment i.e., all the retirement benefits defendant on last pay.

10. It is made clear that the petitioner in any

event shall not be subjected to any recovery of excess amount in view of the law laid down by the Apex court in the case of Chandi Prasad Uniyal (supra) because such issue of recovery has arisen only after the petitioner has retired from service.

11. This Court hopes and believes that this exercise shall be completed within a period of three months and the excess amount already recovered from the petitioner depending on the outcome of the total amount found to be payable to the petitioner on the basis of his retirement benefit shall also be made within next one month from the date of passing of such order by the Superintendent of Police, Sheikhpura.

12. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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