IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16593 of 2011

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Shiv Kumar Mishra Son of Late Jaidev Mishra Resident of Mohalla-Kulharwa, Ward No.2, Shivpuri, P.S.- Motihari Muffasil, District- East Champaran.

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary, Government of Bihar, Department of Primary Education.
3. The District Superintendent of Education, East Champaran at Motihari.
4. The Deputy Superintendent of Education, East Champaran at Motihari.
5. Block Education Officer cum Drawing and Disbursing Officer, Sugauli, East Champaran.
6. The Accountant General, Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Uma Kant Shukla, Advocate.
For the State : Mr. Kamlesh Kumar Sharma, Advocate.
For A.G. Bihar : Mr. Satyendra Kumar Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL ORDER

4. 30.01.2015 Heard Mr. Uma Kant Shukla, learned counsel for the petitioner, learned A.C. to S.C. 22 for the State and Mr. Satyendra Kumar Jha, learned counsel for the Accountant General, Bihar.

The petitioner has approached the Court for quashing of the order contained in Letter No. Ni./1064 dated 08.06.2011 (Annexure-2) by which the respondent no. 4 has held that on account of grant of one extra increment, the petitioner has received excess payment and the respondent no. 4 was directed to calculate the amount and recover/adjust the same and also for a direction to the respondents to refund Rs. 45,737/- to the petitioner which has been deducted from his gratuity as a consequence of the aforesaid impugned order.

The brief facts relevant for considering the present matter is that the petitioner superannuated from the post of Assistant Teacher, Government Middle School, Chapra Bahas, P.S. Sugauli in the District of East Champaran on 30.09.2010. During his service period, in light of the resolution of the Finance Department, Government of Bihar, contained in Memo No. 3A- 2 Be. Pu.-16/09/630 dated 21.01.2010, relating to revision of the pay scale of State Government employees with effect from 01.01.2006, the petitioner was also granted one increment. However, it appears that lateron the Finance Department, Government of Bihar came out with another resolution contained in letter no. 3A-2-Be. Pu. 16/2009 dated 21.10.2010 by which Clause 10 of the earlier resolution dated 21.01.2010 has been explained in a different manner inasmuch as it has been held that with regard to persons who had already been granted three increments, fresh increment as per the resolution dated 21.01.2010 was not payable. The issue at hand only relates to what should be the effect of the subsequent resolution of the State Government dated 21.10.2010 in view of the fact that the petitioner had already superannuated on 30.09.2010.

Learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court in the case of **Syed Abdul Qadir v. State of Bihar** reported in **2009 (2)**

PLJR 74, in which it has been held that if excess amount paid was not because of any misrepresentation or fraud on the part of the persons concerned and was the result of wrong interpretation of the rule applicable to them, no recovery of the amount that has been paid in excess can be made from them and further the amount recovered was directed to be refunded.

In the present case while reading the resolution dated 21.01.2010, it cannot be said that there was any restriction placed with regard to a person having already received three increments. The language is very plain and simple that the first increment after fixation of pay on 01.01.2006 in the revised pay structure shall be granted. This was done in the case of the petitioner and the State Government itself issuing clarificatory notification clearly indicates that there was some scope for misinterpretation in the original resolution dated 21.01.2010 and thus there was a requirement to issue clarification for which subsequently resolution dated 21.10.2010 was issued. This Court is in agreement with the submissions of learned counsel for the petitioner that such action including recovery is impermissible as in the present case also there was no misrepresentation or fraud by the petitioner and the authorities had themselves taken a view which only subsequently, after the superannuation of the petitioner, was found lacking clarity leading to issuance of such clarification by government resolution dated 21.10.2010. Thus, the decision in the case of **Syed Abdul Qadir** (supra) of the Hon'ble Supreme Court, which supports such view, comes to the aid of the petitioner.

For the reasons aforesaid, the impugned order contained in Letter No. Ni./1064 dated 08.06.2011 is hereby set aside and any recovery made pursuant thereto is held to be bad. As a result, if any consequential orders are required to be issued relating to fixation of pension, the same shall also be done. Further, the amount of Rs. 45,737/- having been already recovered, is directed to be refunded to the petitioner. The exercise be completed within a period of six weeks from the date of receipt/production of a copy of this order before the District Programme Officer (Establishment), East Champaran, Motihari (the then District Superintendent of Education, East Champaran, Motihari).

The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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