

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16020 of 2010

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1. Indra Vilash Jha S/O Late Prem Lal Jha R/O Vill.- Hatha, P.S.- Pear,
Distt.- Muzaffarpur.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. The Principle Secretary Human Resources Department, Government of Bihar, Patna
3. The Director, Primary Education Human Resources Department, Government of Bihar, Patna
4. The District Magistrate-Cum-Chairman District Education Establishment Committee, Muzaffarpur
5. The District Superintendent of Education, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Chandra Jha 3, Advocate.

For the Respondent/s : Mr. Kinkar Kumar SC-27

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR

MANDAL

ORAL ORDER

5 05-01-2015

Heard Mr. Satish Chandra Jha -3 learned counsel for

the petitioner and Mr. Kinkar Kumar SC-27 for the State. A counter affidavit has been filed on behalf of the respondent no.5.

The petitioner filed the writ application questioning part of the order dated 14.12.2007 (Annexure-1) whereby while fixing the scale of pay of the petitioner in B.Sc. trained scale w.e.f. 01.04.1990 it was directed that the salary received by the petitioner in excess thereof from 20.05.1988 shall be recovered. The petitioner has now retired from service w.e.f. 30.09.2014. There is no dispute that earlier the petitioner was granted B.Sc. trained scale vide order dated 31.12.1990 (Annexure-3) w.e.f. 20.05.1988 which was subsequently cancelled/withdrawn by another order dated 27.12.1997 (Annexure-4) passed by the

District Superintendent of Education. Aggrieved thereby the petitioner filed a writ application before this Court vide CWJC No. 1538 of 1998. This Court, while finding no legal flaw in the said order disposed of the writ application whereby the recovery of the salary/perks paid to and received by the petitioner in excess was quashed. For better appreciation, this Court would extract hereinbelow the relevant part of the order dated 26.04.1999 (Annexure-5):-

“Although the petitioner has not challenged the order said to have been passed by the respondents for recovery of the excess amount paid to him by reason of the impugned grant of the B.Sc. trained scale, I may observe that, in the facts of the case, it does not appear that the B.Sc. trained scale was granted to the petitioner as a result of any fraud or misrepresentation by him. As noted above, similar order had been passed in cases of others also. The Graduate trained scale appears to have been allowed under some confusion or misinterpretation of the Government order. The petitioner having received the payment and appropriated the same, it would be unjust to allow the respondents to recover the excess amount, even though the payment was not warranted under the rules. The recovery of the excess amount would visit the petitioner with serious consequences for no fault of his. I would, therefore, direct that while the case of the petitioner for grant of higher scale may be considered by the concerned authorities in accordance with law, no recovery for the excess amount during intervening period shall be made from his salary. However, the respondents will be entitled to re-fix his pay in accordance with rules.”



The petitioner made a representation for grant of such promotion whereafter the respondents passed the impugned order. The justification for granting him the promotion in the pay scale of B. Sc. trained in the light of the Rule provisions has been explained by the respondents in the counter affidavit. On perusal of the pleadings on record this much is evident that no fraud or mis-representation at any point of time was played/made by the petitioner for grant of such monetary benefits initially w.e.f. 20.05.1988 and subsequently by the order dated 01.04.1990. Such grant of monetary benefits to the petitioner was not selective by way of undue favour. If that be the case then it would be wholly unjust on the part of the respondents to direct recovery of the salary/ perks paid in excess to the petitioner particularly when the petitioner has already retired from the service. This Court, in view of the settled position in law, restrained the respondents from recovering the excess salary paid to the petitioner while disposing of the CWJC No. 1538 of 1998 (Annexure-5). Applying the same analogy and considering the statements made in the counter affidavit, this Court is satisfied that the second part of the order contained in Annexure-1 in so far as it directs for recovery of the amount/salary already paid to and received by the petitioner in excess pursuant to such grant of promotion by the first part of the said order is wholly unjustified. Counsel for the petitioner has rightly in this regard relied on **2007(3) PLJR 398**

(Ram Binod Singh Vs. The Bihar State Electricity Board & Ors).

Accordingly, the application is allowed. Part of the impugned order dated 14.12.2007 (Annexure-1) passed by the District Superintendent of Education, Muzaffarpur in so far as it seeks to recover the amount/salary paid to and received by the petitioner in excess is quashed.

There shall be no order as to costs.

When the order was dictated learned counsel for the petitioner has submitted that although the scale of salary to which the petitioner is found entitled to has been fixed under the impugned order but actual payment thereof has not been made from due date. If that be so, then the petitioner would be entitled to file appropriate representation before the concerned/ competent authority ventilating the said grievance.

(Kishore Kumar Mandal, J)

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