

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5333 of 2015

=====

Braj Bhushan Singh, son of Late Ram Deo Singh, Resident of village and P.O. Berua, Via- Hardi, P.S. Saraiya, District-Muzaffarpur, the retired Assistant Teacher, Nationalized Up-graded Middle School, Basra Bazar, Block- Saraiya, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Primary Education, Education Department, Government of Bihar, Patna.
3. The District Education Officer, Muzaffarpur, District-Muzaffarpur.
4. The District Program Officer (Establishment) ,Muzaffarpur, District-Muzaffarpur.
5. The Treasury Officer, Muzaffarpur, District-Muzaffarpur.
6. The Drawing and Disbursing Officer, Manikpur, Saraiya, District-Muzaffarpur.
7. The Accountant General, Bihar, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Adv
For the Respondent/s : Mr. GP1- U.S.S.Singh

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 24-04-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:-

"Commanding and directing the Respondent Authorities to refund the amount of Rs. 1,04,921/- which was illegally withheld from the gratuity of the petitioner vide memo no. Pen-14/PEN120814142275/201411142335GO dated 26.08.2014.".



The petitioner, a retired teacher of Government Middle School, has a grievance that the Accountant General in his authority slip dated 26.08.2014, had deducted the amount of Rs. 1,04,921/- without giving him a show cause notice and/or opportunity of hearing as with regard to recovery of the aforementioned amount of Rs. 1,04,921/-.

Learned counsel for the State on the other hand having relied on the letter of the District Programme Officer (Establishment) dated 03.04.2014, has sought to explain that such recovery was on account of excess salary drawn by the petitioner.

Learned counsel for the petitioner in reply has submitted that first of all it is absolutely incorrect to say that the petitioner was paid any excess amount of salary, inasmuch as, when fixation of salary was made not only by the Drawing and Disbursing Officer of the School i.e. the Headmaster was present but also after verification by the District Accounts Officer, Pay Fixation Branch of

Finance Department, Muzaffarpur.



In the considered opinion of this Court, though the Government or the authorities may have right to recover any excess amount to which the petitioner was not entitled but then before making such recovery the petitioner was required to be given a show cause notice. Admittedly, the same was not done in the case of the petitioner, inasmuch as, from reading of the letter of the District Programme Officer (Establishment), Muzaffarpur dated 03.04.2014, it transpires that while the Service-Book and pension papers of the petitioner were sent to the Drawing and Disbursing Officer of the petitioner, namely, the Headmaster of the School a direction was also given for re-fixation of the entire salary of the petitioner w.e.f. 01.01.1986. The petitioner in fact had already retired on 31.01.2014, and therefore if the respondents in course of fixation of pension had found the petitioner to have drawn any excess amount of salary, to which he was not entitled, they ought to have

at least given show cause notice to the petitioner. That having been not done, this Court cannot approve the deduction of the amount of Rs. 1,04,921/-.

At the same time, the petitioner cannot be also made richer, if he cannot justify, the grant of excess salary to which he was not entitled. Such excess amount of salary drawn by the petitioner therefore will have to be refunded if the petitioner cannot validly explain the pay fixation made from time to time in the light of the Government decisions.

Considering all these aspects, this Court would direct the District Programme Officer (Establishment), Muzaffarpur to issue a show cause notice to the petitioner giving full details and reason for recovery of Rs. 1,04,921/- and the petitioner on receipt of such show cause notice shall file his reply whereafter and appropriate decision will be taken by the District Education Officer, Muzaffarpur who is the Chairman of the District Promotion Committee under the 2011 Rules

of grant of promotion in the B.A. trained pay scale. This entire exercise, however, must be completed within a period of six months from the date of receipt of this order.

It is also made clear that payment to the petitioner already made on the head of amount of gratuity after deduction of Rs. 1,04,92/- shall be treated to be adhoc and the decision of the D.E.O., Muzaffarpur will ultimately govern the result of recovery/refund of the amount of Rs. 1,04,921/-.

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

(Mihir Kumar Jha, J)

Ranjan/-

U			
---	--	--	--