

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12606 of 2008

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Rajpal Ram son of late Chatu Ram resident of village Kumbhipur P.O.
Khaga (Kumbhipur) P.S. Khaga, District Fatehpur (U.P.).

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar,
Patna.
2. The D.G. cum I.G. of Police, Bihar, Patna.
3. The D.I.G. of Police Darbhanga range, Darbhanga.
4. The S.P. Samastipur.

.... Respondents

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Appearance :

For the Petitioner : Mrs. Nirmala Kumari
Mr. Purnendu Nr.Singh

For the State : AC to GA-4

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

2. 25-08-2015 Heard learned counsel for the petitioner and learned
A.C. to Govt. Advocate – 4.

The petitioner, who retired as Havildar w.e.f. 01-10-2007, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to quash an order dated 13-02-2008 passed by the Superintendent of Police, Samastipur (Annexure - 2), whereby a direction was issued to recover the excess pay drawn by the petitioner from his gratuity on the plea that without passing Hindi Noting & Drafting Examination, he had availed the benefit of pay increment. Alongwith the petitioner, direction was given to recover the excess amount in respect of other two Havildars also.



It was submitted by learned counsel for the petitioner that on 01-06-1981, the petitioner was promoted as Havildar from the post of Constable and thereafter, his pay was enhanced and he continued to draw the salary and finally, he superannuated w.e.f. 01-10-2007. After the retirement of the petitioner, without any show cause notice or without asking for any explanation, the Superintendent of Police, Samastipur has come out with District Order No. 350 of 2008 dated 13-02-2008, whereby, he directed for recovery of excess pay drawn by the petitioner to the tune of **Rs. 51,199.40** (fifty one thousand one hundred ninety nine & forty paise) from his gratuity amount. Learned counsel for the petitioner submits that after retirement on the plea of non-passing of the Hindi Noting & Drafting Examination, the respondents were not having any authority to pass an order for recovery of the amount, unless it was a case of misrepresentation or suppression of fact against the employee. To substantiate his submission, learned counsel for the petitioner has placed reliance on **Annexure – 4** to the writ petition i.e. a Division Bench order of this Court passed on 07-11-2003 in L.P.A. No. 126 of 2003. On the aforesaid ground, it has been prayed to quash the impugned order and grant consequential benefits. It has been indicated at the time of argument that in view of **Annexure – 2** to the writ petition,

recovery has already been effected from the amount of gratuity of the petitioner. Accordingly, a prayer has been made for directing the respondents to refund the recovered amount after quashing **Annexure – 2** to the writ petition.

Learned A.C. to Govt. Advocate – 4 has opposed the prayer of the petitioner. He submits that in view of Government Notification No. 361 dated 15-06-1968, it was necessary for the petitioner to pass in Hindi Noting & Drafting Examination within a period of one year from the date of promotion. He tried to justify the **Annexure – 2** and submits that order impugned is not required to be interfered with.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is not a case of respondent/State that the petitioner by way of misrepresentation or concealment of fact had obtained promotion and got enhanced salary. As per settled law in such a situation, no recovery can be effected. At this juncture, it would be appropriate to quote relevant portion of order dated 07-11-2003 passed in L.P.A. No. 126 of 2003 (**Annexure – 4** to the writ petition), which is as follows:-

“Even assuming that the appellant had to pass the aforesaid examination of Hindi Noting and Drafting, the question arises as to whether at this stage recovery can be made or not. Law is well settled that if there is no misrepresentation

on the part of the employee and the benefit of higher pay scale is given to him wrongly by the employer for which there is no fault on the part of the employee, then the same cannot be recovered. The act of recovery cannot be said to be in consonance with equity, good conscience, justice and fairness.”

In view of law settled on this issue, the Court has got no option but to set aside **Annexure – 2** to the writ petition, whereby recovery of Rs. 51,199.40 was directed from the gratuity amount of the petitioner.

The order impugned in relation to the petitioner is, hereby, set aside.

The writ petition stands allowed with direction to the respondents to take all steps to refund the recovered amount within a period of three months from the date of receipt/production of a copy of this order, failing which, the petitioner shall be entitled to claim interest @ 12% (twelve percent) per annum on the said amount, which shall be calculated from the date of recovery.

(Rakesh Kumar, J.)

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