

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12842 of 2008

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Ram Ayodhya Thakur, son of Lage Mangara Thakur, P.O. Kalyanpur, P.S.
Bihiyan, District- Bhojpur

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. 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/s : Mr. Ram Hirday Prasad, Adv.

For the Respondent/s : Mr. AC to SC-9

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

2 03-09-2015

Heard learned counsel for the petitioner and learned

AC to SC-9.

The petitioner, invoking writ jurisdiction of this Court under Article-226 of the Constitution of India, has prayed for quashing of an order dated 12.02.2008 passed by the Superintendent of Police, Samastipur, whereby after retirement of the petitioner, direction was issued for recovery of excess pay drawn by the petitioner. The petitioner retired on 01.07.2007 as Havildar. He was promoted as Havildar in the year 1981, however after the petitioner superannuated , the impugned order was issued on the ground that the petitioner had not passed Hindi Noting and Drafting Examination and direction was given to recover the excess paid amount. The total amount of Rs.99,004/- has already

been recovered from the gratuity of the petitioner. The impugned order i.e. Annexure-1 was pertaining not only in respect of the petitioner, but in respect of other two Havildars also. Among them one was Sri Rajpal Ram, from whose gratuity also recovery was affected.

Learned counsel for the petitioner submits that Sri Rajpal Ram, from whose gratuity, recovery was affected by the same order, by which recovery was affected from the gratuity of the petitioner. Sri Rajpal Ram approached this Court by filing a writ petition vide C.W.J.C.No.12606 of 2008. Learned counsel for the petitioner submits that in view of issue set at rest by a Division Bench of this Court in L.P.A. No. 126 of 2003, this Court quashed the part of the order pertaining to recovery from the gratuity of Havildar Rajpal Ram and directed the Respondents for refunding the recovered amount to Havildar Rajpal Ram. He submits that the case of the petitioner is exactly similar to the case of Havildar Rajpal Ram and, as such, the petitioner has prayed for same relief.

Learned AC to SC-9, relying on a Judgment of the Apex Court reported in (2012) 8 SCC 417; Chandi Prasad Uniyal & Ors Vs. State of Uttarakhand & Ors, submits that Hon'ble Supreme Court has said that even in a case, where there is no misrepresentation or suppression of fact, if excess payment has



been made to an employee, recovery can be affected and, as such, he submits that there is no error in the order passed by superintendent of Police. In reply, learned counsel for the petitioner has placed reliance on a recent Judgment of the Hon'ble Supreme Court reported in 2015 (1) PLJR 261(SC) ; State of Punjab & Ors Vs. Rafiq Masih (White Washer) etc.. He submits that recently the Apex Court considering earlier almost other Judgment of the Apex Court has framed a guideline and as per guideline, keeping in view the fact that the petitioner was a class-III employee, recovery in the case of the petitioner was required to be done since there was no allegation against the petitioner regarding misrepresentation, suppression or concealment of fact.

In view of facts and circumstances, particularly the fact that in respect of one of Havildar , namely, Sri Rajpal Ram , from whose gratuity also direction was issued for recovery by the same order, which has already been quashed by this Court vide order dated 25.08.2015 in C.W.J.C.No.12606 of 2008, the order impugned i.e. Annexure- 1 to the writ petition may not sustain so far as it relates to the petitioner. Accordingly, the order dated 12.02.2008 i.e. District Order no.350/08 pertaining to the petitioner is hereby set aside and the Respondents are directed to take steps to refund the recovered amount i.e. Rs.99,004/- to the

petitioner 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 % per annum on the said amount, which shall be calculated from the date of recovery.

The writ petition stands allowed.

(Rakesh Kumar, J)

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