

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13556 of 2015

=====

Arun Kumar Pandey son of Late Sahdeo Pandey, Resident of Madhuri Chowk,
Railway Colony, Road No. 18, Queerer No. 4864, P.S.- Samastipur (Town),
District- Samastipur Petitioner

Versus

1. The State of Bihar
 2. The Director General of Police, Government of Bihar, Patna
 3. The Inspector General of Police, Darbhanga
 4. The Deputy Inspector General of Police, Darbhanga
 5. The Superintendent of Police, Samastipur Respondents
- =====

Appearance :

For the Petitioner/s : Mr. Behzad Akhtar, Advocate
For the Respondent/s : Mr. P.K. VERMA, AAG 5 and
Mr. Saroj Kr.Sharma, AC to AAG 5

=====

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 28-06-2016

The petitioner seeks quashing of order dated 23.5.2015 by which the Superintendent of Police, Samastipur (respondent no.5) has directed the District Treasury Officer, Ara to make recovery of excess payment of Rs.7,04,251/- from his retiral benefits on the ground that he had not passed the Hindi Noting and Drafting examination during this service in the Bihar Police.

2. The petitioner was appointed as constable in the Bihar Police Service with effect from 12.1.1972 having passed the matriculation examination with Hindi as subject in 1969. In 1983, on basis of the State seniority, he was promoted to the post of Assistant Sub inspector of Police with effect from 1.12.1983 and retired from this post on 31.11.2013.



3. The petitioner submits that after more than one and a half years of his retirement, respondent no.5 vide letter no. 179, dated 23.5.2015 directed recovery of excess payment of Rs.7,04,251/- from his retiral benefits on the ground that he had not passed the Hindi Noting and Drafting examination. While relying on provisions of Clause-III of the Bihar Sarkari Sevak (Hindi Paricha) Niyamavali, 1968 (herein after referred to as the 'Niyamavali, 1968'), the petitioner submits that he was a Class-III employee and has already retired on 31.11.2013, as such, respondents after a long period spanning more than 30 years, would not be entitled to recover the excess amount paid to him. In support of his submission, learned counsel refers to a judgment of the Hon'ble Apex Court in case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others, reported in (2015) 4 SCC 334, particularly paragraph 18. He has also relied upon a judgment in case of Ram Kumar Singh Vs. State of the Bihar and others, reported in 2013(3) BBCJ 154.

4. Mr. P.K.Verma, learned AAG 5 appearing for the State Government submits that Clause-III of the 'Niyamavali, 1968' mandates that any Government employee who has to make records and submit his comments in discharge of his official duty is necessarily required to pass Hindi Notings and Drafting

examination, irrespective of the fact that he has passed Matriculation examination with Hindi subject.

5. I have heard learned counsel for the parties.

6. It is true that as per provisions of Clause-III of the 'Niyamavali, 1968', any Government employee who has to make records and submit his comments in discharge of his official duty is necessarily required to pass Hindi Noting and Drafting examination. Nonetheless, respondents cannot make recovery of excess payment made long time back, as it would be harsh and iniquitous. In this regard, petitioner has relied upon a judgment of the Hon'ble Apex Court in case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others, reported in (2015) 4 SCC 334, particularly paragraph 18. The paragraph 18 of the said judgment is relevant which is reproduced as under:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summaries the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

- (iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) *In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

7. The learned Single Judge of this Court, in case of Ram Kumar Singh Vs. State of Bihar and others, has too observed that one cannot be deprived of financial benefits, if the increments have been granted under conscious decision, not accentuated by any fraud or misrepresentation on part of the petitioner.

8. In this view of the matter, the order of recovery, dated order dated 23.5.2015 of the Superintendent of Police, Samastipur (respondent no.5) is set aside.

9. The writ petition is thus allowed.

(Samarendra Pratap Singh, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
Uploading Date	12.7.2016
Transmission Date	12.7.2016