

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15792 of 2012

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1. Kameshwar Prasad Shrivastava Son Of Late Dukhi Mahto Resident Of Village -
Harinarainpur, P.S. - Nardiganj, District - Nawada

.... Petitioner/s

Versus

1. The State Of Bihar Through The Director General Of Police Bihar, Patna
2. The Director General Of Police, Bihar, Patna
3. Inspector General Of Police, Magadh Range, Gaya
4. Deputy Inspector General Of Police, Magadh Range, Gaya
5. Superintendent Of Police, Nawada
6. Deputy Superintendent Of Police, Head Quarter, Nawada
7. District Magistrate, Nawada
8. Accountant General (A & E) Bihar, Patna
9. District Accounts Officer, Nawada
10. District Provident Fund Officer, Nawada

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rabi Bhushan Prasad No. 1, Advocate.

For the State : Mr. Deepak Sahay, Advocate.

For the Accountant General : Mr. Ram Yash Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 11-08-2016

1. The petitioner retired with effect from 31.01.2010 from the post of Sub-Inspector of police while posted in Nawada District. He has filed this writ application seeking quashing of the order dated 26.07.2010 issued by the Superintendent of Police whereby his pay has been re-fixed to his disadvantage, right from the year 1981 till the date of his superannuation. On the basis of said re-fixation of petitioner's pay, an amount of Rs, 2,26,248/- has been found to have been paid in excess to the petitioner, to his actual entitlement, which

has been recovered from the post retiral benefits which the petitioner is entitled to receive after his superannuation.

2. A counter affidavit has been filed on behalf of the respondent state of Bihar stating that upon the petitioner's retirement, the pension branch of the office of the superintendent of police, Nawada had sent the petitioner's service book and other relevant papers to the District Account Officer, Nawada for verification of his pay fixation. In response thereto, the District Account Officer returned all the aforesaid papers with the objection that pay scale of the petitioner in the years 1981, 1986 and 1996 was not clear. Subsequently, after making necessary rectification, papers were sent again to the District Account Officer who again raised certain objections. It has also been stated that the petitioner had withdrawn excess amount of Rs. 2,26,248/- to his actual entitlement which has been recovered from the post retiral benefits. There is no assertion in the counter affidavit that the petitioner was in any manner responsible for fixation of his pay at any stage on the basis of which he has received his salary. There is no allegation of any misrepresentation or fraud played by him leading to wrong fixation his pay, if any.

3. In such circumstances, in my view, the decision of the said respondents to recover the said amount or adjust the amount against any post retiral dues will lead to undue hardship more so after the

petitioner's superannuation. Accordingly, decision to withhold the said amount of Rs. 2,26,248/- is held to be illegal and not sustainable. This application is accordingly, allowed.

4. If the said amount has been recovered from the petitioners post retiral entitlement, the same must be refunded to the petitioner within a period of two months from the date of receipt of a copy of this order.

6. The petitioner has also claimed that his pension should be fixed on the basis of the last pay which he had drawn on the date of his superannuation and not on the basis of re-fixation of pay as done by him. So far as this aspect is concerned, it is directed that if the petitioner files a representation before the Superintendent of Police, Nawada justifying his pay fixation, the same shall be duly considered and necessary decision shall be taken within a period of six weeks from the date such representation is filed.

7. This disposes of this application.

(Chakradhari Sharan Singh, J)

Prakash/-

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