

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2538 of 2011

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Surya Nath Tiwary , son of Late Ram Sakal Tiwary, resident of village -
Bhadwar, P.S. Chandi District Bhojpur (Arrah)

.... Petitioner/s

Versus

1. The State of Bihar
2. The State of Bihar through the Secretary Department of Home
Government of Bihar, Patna
3. The Director General of Police (Special) Bihar Patna
4. The superintendent of police (special branch) Bihar Patna
5. The Under Secretary Department of Finance (pay fixation cell) govt.
of Bihar
6. The Accountant General Bihar Patna

.... Respondent/s

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Appearance :

For the Petitioner/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

8 24-02-2016 Heard Sri Sunil Kumar Mishra, learned counsel for the
petitioner and learned AC to GP No. 14.

The petitioner, who superannuated from the post of Assistant Sub Inspector of Police (ASI) with effect from 31.5.2009 has approached this court invoking its writ jurisdiction under Article 226 of the Constitution of India with a prayer to direct the respondents to re-fix his pay scale as provided prior to retirement of the petitioner and also to refund the amount of Rs. 1,94,135/- which has been recovered after retirement of the petitioner.

It has been pleaded that petitioner was initially appointed as Constable in the year 1973 and thereafter he was



promoted as Assistant Sub Inspector of Police and finally he retired with effect from 31.5.2009 from the post of Assistant Sub Inspector, Special Branch Patna. Thereafter treating his last pay drawn as Rs. 19,710/- provisional pension was sanctioned and the petitioner started to draw provisional pension. Subsequently without any notice to the petitioner the respondents passed an order whereby his last drawn salary was reduced from Rs. 19,710/- to Rs. 17,930/- and also amount on the plea of excess payment to the tune of Rs. 1,94,135/- was recovered from the retiral dues of the petitioner. It has been argued that neither the petitioner was asked to explain nor any notice was given to him. Learned counsel for the petitioner submits that it was not a case of misrepresentation or suppression of fact on the part of the petitioner, rather the petitioner being a Class III employee had superannuated and the authority concerned had passed order for grant of provisional pension treating the last pay drawn by the petitioner as Rs. 19,710/-. Relying on a recent judgment of the Supreme Court reported in 2015(1)PLJR (SC) 261 [State of Punjab and Ors. vs. Rafiq Masih (White Washer)] it has been argued that law has been set at rest that in case of excess payment without any misrepresentation or suppression by a Class III or Class IV employee after retirement no recovery can be affected.

Accordingly he submits that the recovered amount i.e. Rs. 1,94,135/- is required to be refunded by the respondents . He has also argued that incorrectly last pay drawn by the petitioner has been reduced.

In this case a counter affidavit has also been filed on behalf of the respondent and it has been stated that earlier while sanctioning for provisional pension an error had committed which has been corrected vide Annexure - '3' to the counter affidavit on the basis of objection raised by the Finance Department and thereafter the order no. 1347 /2009 was issued, copy of same order has also been brought on record as Annexure - '2' to the counter affidavit.

Without going into merit of the case or examining the correctness of fixation of pension the court is of the opinion that in the light of the order of the Apex Court in Rafiq Masih Case (Supra) certainly the respondents are required to refund the recovered amount i.e. Rs. 1,94,135/-, to the petitioner since it is not a case of the respondents that petitioner had misrepresented or committed fraud. In view of the facts and circumstances the writ petition is partly allowed with a direction to the respondents to refund the recovered amount of Rs 1,94,135/- to the petitioner within a period of eight weeks from the date of receipt/

production of a copy of this order failing which the petitioner shall be entitled to get interest on the said amount at the simple rate of 9% per annum. The interest amount in that event may be recovered from the pocket of the officer/ employee responsible for delay in payment.

(Rakesh Kumar, J)

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