# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.5755 of 2012**

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Jai Mangal Choubey Son Of Late Tulasi Choubey Resident Of Village-Majhauli, P.O.-Bharasara, P.S.-Bihiya, District-Bhojpur (Ara)

.... .... Petitioner

Versus

1. The State Of Bihar
2. The Director General Of Police, Bihar, Patna
3. The District Accountant Officer Bhojpur, Ara
4. The Superintendent Of Police Bhojpur, Ara
5. The Deputy Superintendent Of Police Bhojpur, Ara
6. The Accountant General Bihar Birchand Patel Path Patna
7. The District Accounts Officer (Finance) Purnea
8. The State Of Jharkhand
9. The Superintendent Of Police, Jamshedpur, Jharkhand
10. The Superintendent Of Police, Godda, Jharkhand

.... .... Respondents

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**Appearance :**
For the Petitioner/s : Mr. Maya Shankar Mishra
For the Respondent/s : Mr. Kumar Sachin Gp24

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**
ORAL ORDER

7 18-07-2016 Heard the parties.

The petitioner by way of present writ application seeks quashing of the order No. 2246 of 2011 dated 26.09.2011 issued by the Superintendent of Police, Bhojpur (Ara), whereby certain amount is sought to be recovered from the petitioner's entitlement of gratuity. The recovery is sought to be made on the ground that the petitioner had received salary in excess of his actual entitlement because of wrong fixation of pay or otherwise. Total amount, thus, which is sought to be recovered from the petitioner is Rs. 51,126/-.

The other grievance which the petitioner has raised in the present application is that the General Provident Fund amount which has been paid to him does not include the deductions made from his salary for the period 1972 to 1975, when he was posted at places, which are now under the State of Jharkhand. So far as the General Provident Fund amount is concerned, there is no dispute that deductions made from the petitioner’s salary during the said period have not been accounted for, probably because the details of deduction could not be located.

The petitioner had retired after serving as Sub Inspector of Police from the district of Bhojpur with effect from 31.07.2008. The order impugned, whereby excess amount of salary said to have paid to the petitioner is sought to be recovered came to be issued on 26.09.2011, more than three years after the date of his retirement.

Learned counsel for the petitioner has submitted that before issuance of the said order, the petitioner was given no opportunity for hearing. According to him, the decision to recover amount from the gratuity payable to him has civil consequence and without giving an opportunity for hearing, the said order ought not to have been passed. The second contention is that in any view of the matter, if any amount was paid to the petitioner in excess while he was in service, the same cannot be said to have been paid because of any misrepresentation of fraud played by the petitioner. According to him, there is no stand taken on behalf of the State of Bihar that because of any misrepresentation of fraud played by him leading to excess payment. He further submits that recovery of amount after superannuation, would cause great harassment and inconvenience to the petitioner. He has submitted that decision to recover the amount is harsh and needs to be interfered with.

Learned counsel appearing on behalf of the respondents-State of Bihar has submitted that there is no illegality in the decision to recover the amount admittedly paid to the petitioner in excess to his actual entitlement. He has, accordingly, submitted that the petitioner cannot resist the impugned decision of the State Government.

There is no dispute about the fact that before issuance of the impugned order, the petitioner was not given any opportunity of being heard. Further, there is nothing on record to show nor any material has been produced on behalf of the State of Bihar that it was because of any misrepresentation of fraud played on the part of the petitioner that the excess amount came to be paid to the petitioner.

In such circumstance, the decision to recover the amount after three years of the petitioner's superannuation, in my view, is arbitrary and unsustainable. The impugned order dated 26.09.2011, is accordingly, quashed.

The respondents are directed to ensure that the petitioner is paid the entire gratuity amount without effecting any deduction on the strength of said order dated 26.09.2011. As regards, General Provident Fund amount, it is almost admitted fact that deductions made from the salary of the petitioner for the period 1972 to 1975, have not been paid to the petitioner. It appears from the stand taken on behalf of the respondents that it is not easy to reconcile the petitioner's G.P.F. account for the same period.

In the facts and circumstances of the case, I direct the Superintendent of Police, Jamshedpur, Jharkhand and the Superintendent of Police, Godda, Jharkhand, where the petitioner was posted during the said period to ensure that the details of deductions made from the salary of the petitioner for the said period are obtained. If such details are obtained, necessary steps thereafter shall be taken for payment to the petitioner after calculating up to date interest thereon. If it is impossible to obtain the details of deductions for the same period, the deductions made from the salary of the petitioner in the year 1976 shall be treated to be deductions made for the said period and accordingly, the General Provident Fund amount shall be calculated and paid with statutory interest. Such payments must be made within a maximum period of six months from today.

The application stands disposed of, accordingly with the above directions and observations.

**(Chakradhari Sharan Singh, J)**

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