IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11063 of 2012

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Chaudhary Prasad Singh, S/o Late Yamuna Prasad Singh, resident of Village - Maniarchak, P.S. - Piri Bazar, District – Lakhisarai.

.... *Petitioner*

Versus

1. The State of Bihar.
2. The Director General of Police, Govt. of Bihar, Patna.
3. The Superintendent of Police Araria, District - Araria.
4. The District Treasury Officer, Araria, District - Araria.
5. The Accountant General, Bihar, Patna.

.... *Opposite Parties*

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Appearance :

For the Petitioner :Mr. Yugal Kishore, Sr. Adv.
Mr. Shashi Bhushan Singh, Adv.

For the State :Mr. Rakesh Kr. Shrivastava, AC to GP-15

For the Accountant General :Mr. L.P.K. Rajgrihar, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 20-09-2016

The present application, under Article 226 of the Constitution of India, has been filed seeking quashing of the order, dated 28.02.2012, passed by the Superintendent of Police, Araria, refixing petitioner’s salary on the ground that he had not passed Hindi Noting and Drafting Examination and, therefore, he was not entitled for annual increments, which was wrongly given to him while he was in service.

2. The petitioner was appointed as a Constable in the year 1977. In the month of August, 2005, he was promoted to the rank of Assistant Sub-Inspector of Police. He retired, after attaining the age of superannuation, with effect from 01.01.2011. Though he had not passed Hindi Noting and Drafting Examination, annual increments were allowed to him. As on the date of retirement, taking into account the increments, his salary was fixed at Rs. 18,280/- and, accordingly, sanction order was issued for payment of Pension, on the basis of his last pay drawn @ Rs. 9,140/-, and was communicated to the Accountant General, Bihar, Patna, for authorizing monthly payment at the said rate. The Accountant General, Bihar, Patna, raised an objection that since the petitioner had not passed Hindi Noting and Drafting Examination, he could not have earned annual increments after he was promoted to the post of Assistant Sub-Inspector of Police, which is a Class-III post.

3. This is not in dispute that the petitioner has not passed Hindi Noting and Drafting Examination.

4. Upon the objection having been raised, the Superintendent of Police, Araria, came out with the impugned order, fixing the petitioner’s pay at Rs. 16,060/-, as on the date of his superannuation, and sanctioned monthly Pension

@ Rs. 8,030/-. Having noticed that the petitioner had drawn salary more than what he was entitled to, as he had received salary taking into account increments also, the Superintendent of Police, Araria, directed for recovery, from the petitioner, of the excess amount paid to him by the impugned order, dated 28.02.2012.

5. Heard Mr. Yugual Kishore, learned Senior Counsel, appearing on behalf of the petitioner, Mr. Rakesh Kumar Shrivastava, learned Assistant Counsel to Government Pleader No.-15, appearing on behalf of the respondent-State of Bihar, and Mr. L.P.K. Rajgrihar, learned Counsel, appearing on behalf of the Accountant General.

6. Learned Senior Counsel, appearing on behalf of the petitioner, assailing the said order, dated 28.02.2012, has submitted that since the petitioner had passed matriculation examination with Hindi as one of the subjects, he was exempted from passing of Hindi Noting and Drafting Examination, under the circulars issued by the State Government.

7. Learned Senior Counsel, appearing on behalf of the petitioner, has also submitted that in any event, there being no allegation against the petitioner of any misrepresentation or fraud, leading to excess payment of salary in his favour, recovery of excess payment, so done after his superannuation, would cause great hardship to him. In support of his submission, he has placed reliance upon a Supreme Court's decision in case of ***Syed Abdul Qadir Vs. State of Bihar***, reported in ***(2009) 3 SCC 475***.

8. I do not find any substance in the submission advanced on behalf of the petitioner that despite having not passed Hindi Noting and Drafting Examination, the petitioner would have been entitled to annual increments on the basis that he had passed matriculation examination with Hindi as a subject. This question has been gone into in detail in a judgment and order, dated 21.10.2014, passed in C.W.J.C. No. 19043 of 2011 ***(Sukh Narain Tiwari Vs. The State of Bihar & Ors.)***.

9. However, I find substance in the submission advanced on behalf of the petitioner that there is no allegation of any misrepresentation or fraud against the petitioner, leading to allowing him annual increments since 2006 till the date of his superannuation in the year 2011. Learned Senior Counsel, appearing on behalf of the petitioner, has rightly placed reliance on the Supreme Court's decision in case of ***Syed Abdul Qadir*** *(supra)* in this regard.

10. The impugned order, dated 28.02.2012, passed by the Superintendent of Police, Araria, to the extent recovery is sought to be made, on the ground of excess payment of salary to the petitioner, is, hereby, quashed. It is, however, indicated that the petitioner's pension shall be calculated on the basis of last pay, which he was legally entitled to draw on the date of his superannuation, without including the annual increments.

11. Any recovery, if already made from the petitioner's pensionary benefits, must be paid to him within a period of 2 months from the date of receipt/production of a copy of this judgment and order.

12. The respondents are directed to ensure that pension payment order is issued within a period of 1 month from the date of receipt/production of a copy of this judgment and order, if not already issued.

13. This application is, accordingly, partly allowed.

14. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.09.2016
Transmission Date	N.A.