

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10459 of 2016

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Khurshid Alam, son of Late Nazir Alam, Resident of Mohalla- New Millat Colony,
Sector-1, Khagaul Road, Police Station- Phulwarisharif, District- Patna.

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Finance Department, Govt. of Bihar, Patna
3. The Commissioner, Patna Division, Patna.
4. The District Magistrate, Patna
5. The Additional District Magistrate, Patna
6. The Incharge Disaster Management Section, D.M. Office, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjay Singh, Advocate
Mr. Shaikh Arkh Ahmad, Advocate
For the Respondent-State: Mr. Sarvesh Singh, AAG-13

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-02-2017

The instant writ application has been filed by the petitioner for direction to the respondents for payment of retiral benefits with penal interest.

2. The petitioner was appointed as Clerk on compassionate ground in the Collectorate, Buxar in the year 2000. He retired on 30.11.2014 from Patna Collectorate.

3. The contention of the petitioner is that after the retirement, he has not been paid the retiral benefits.

4. A counter affidavit has been filed on behalf of the State, wherein, it has been contended that since the petitioner had



been paid excess amount of Rs.1,54,219/- in view of wrong fixation of pay, the same has been adjusted from the gratuity amount payable to him.

5. It is submitted by the learned counsel for the State that apart from that, all other payments under the different heads like leave encashment, group insurance, provident fund and remaining gratuity amount have already been paid to the petitioner.

6. In reply, learned counsel for the petitioner submitted that though other payments have been made, till date, the pension of the petitioner has not been fixed and the arrear of pension as also regular pension is not being paid to him.

7. On the other hand, learned counsel for the State submitted that the pension of the petitioner is not being paid as he has failed to file the requisition pension application form before the authorities concerned.

8. The said submission of the State has been disputed by the learned counsel for the petitioner. He submitted that duly filled up pension application form was submitted before the authorities concerned on 17th March, 2015 itself. He also submitted that in view of the ratio laid down by the Supreme Court in *State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors. [(2015) 4 SCC 334]*, the recovery of excess amount alleged to have been paid



to the petitioner is impermissible in law. He submitted that the petitioner was a Class-III employee and there is no allegation that he ever mis-represented or played any fraud due to which excess payment was made to him due to wrong fixation of scale while he was in service.

9. I have heard learned counsel for the parties and perused the record.

10. I find substance in the argument advanced by the learned counsel for the petitioner.

11. In **State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors.** (supra), the Supreme Court held that recovery of excess amount paid to employees due to employer's mistake is not permissible in law. It ruled that it would cause extreme harsh consequences to the employees who are totally dependent on their wages to run their family. It also directed that an employer cannot recover excess amount in case of a retired employee or one who is to retire within one year of the order of recovery. It further held that recovery from the employees belonging to Class-III and Class-IV service would be impermissible in law.

12. Admittedly, the petitioner, a clerk at the time of his retirement, was employed in a class-III service. In that view of the matter, the impugned action of the respondents whereby they



claim to have adjusted Rs.1,54,219/- from the admissible gratuity of the petitioner can not be approved.

13. Accordingly, I direct the respondents to pay the aforesaid amount of Rs.1,54,219/- to the petitioner within a period of four weeks from the date of receipt/production of a copy of the order.

14. In order to avoid any controversy, the petitioner is directed to submit his pension application form before the authorities concerned within four week from today. In case of filing of duly filled up pension application form, the respondents shall process the same and sanction the payment of arrear and current pension of the petitioner within eight weeks from the date of such filing and send the sanction order to the office of the Accountant General, Bihar, Patna for authorizing the regular pension to the petitioner.

15. With the aforesaid observations and directions, the writ application is disposed of.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.02.2017
Transmission Date	NA

