

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6430 of 2015

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Saranga wife of Late Salik Ram Resident of Purani Quila Harijan Toli, P.S. - Town
Siwan, District - Siwan.

.... Petitioner/s

Versus

1. Nagar Parishad Siwan through the Executive Officer.
2. The Chairman, Nagar Parishad, Siwan.
3. The Executive Officer, Nagar Parishad, Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gajanan Arun, Adv.

For the Respondent/s : Mr. Ravi Bhushan Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-01-2017

The prayer of the petitioner in paragraph 1 of the
present writ application is as under :-

“1. That the petitioner seeks the following reliefs from
this Hon’ble Court.

- i. Issuance of appropriate writ in the nature of certiorari for quashing the letter no. 1902 dated 17th December 2014 issued by the Executive Officer, Nagar Parishad Siwan whereby and whereunder direction has been issued to deposit the sum of Rs.1,30,383/- failing which the amount will be adjusted from pension/arrears on the ground that the petitioner has worked more than 40 years service.
- ii. Issuance of appropriate writ in the nature of mandamus commanding/directing the Respondents to pay the rest due amount of gratuity, earn leave, arrear of D.A., amount of Provident Fund and salary of January 2012.



iii. Any other relief or reliefs to which the petitioner may be deem entitled under the law in the facts and circumstances of the case.”

2. It is submitted by the learned counsel for the petitioner that the date of birth of the petitioner is 7th January, 1952. She joined the service on 6th December, 1970 and on attaining the age of 60 years, she retired from service since 31st January, 2012.

3. It is contended that after retirement from service, the petitioner applied for payment of retiral dues, but as yet full gratuity, leave encashment, G.P.F. and salary of January, 2012 have not been paid to her.

4. It is contended that the Respondents have calculated an amount of Rs. 1,30,383/- as illegal payment made to the petitioner for the period 1st January, 2010 to 31st January, 2012 and vide letter no. 1902 dated 17th December, 2014, after three years of retirement, the petitioner has been directed to pay the excess amount received by her under the head salary.

5. Per contra, learned counsel for the Nagar Parishad, Siwan submitted that continuation in active service beyond 40 years is not sustainable in the eyes of law. Since the petitioner continued in service after completing 40 years of service and received salary for that period, she has been directed to return the excess salary received by her. It is contended that an employee has to retire from service on



attaining the age of 60 years or 40 years of service, whichever is earlier, but the petitioner continued to work for about 42 years and received amount of salary etc. for the period beyond 40 years of service. He further contended that since the petitioner has failed to return the excess amount taken by her under the head salary, the final post retiral dues of the petitioner has not been paid.

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

7. Admittedly, the petitioner had neither misrepresented nor played any fraud for continuation in service after attaining the age of superannuation. She is a Class IV employee and has been paid salary for the period she has been allowed to work.

8. Considering the hardship which an employee would suffer on the issue of recovery where payments have mistakenly been made by the employer in excess of entitlement, the Hon'ble Supreme Court in *State Of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors. [(2015) 4 SCC 334]*, held that such recovery would be impermissible in law.

9. In paragraph 18 of the aforesaid judgment, the Court held as under :-

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement.



Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

9. In view of the law laid down by the Hon'ble Supreme Court in the case of *State Of Punjab & Ors Vs. Rafiq Masih* (Supra), this Court is of the considered opinion that the order dated 17th December, 2014 passed by the Executive Officer, Nagar Parishad, Siwan, as contained in Annexure-2 to the present writ application, whereby a direction has been issued to the petitioner to deposit a sum of Rs.1,30,383/- failing which the amount would be



adjusted from pension/arrears on the ground that she worked for more than 40 years cannot be sustained.

10. Further, this Court is of the opinion that the post retirement dues of the petitioner could not have been withheld by the respondents on the ground that she had worked for more than 40 years. It is well known principle that pension is not a bounty. It is paid to an employee for his unblemished career.

11. *In D.S. Nakara & Others Vs. Union Of India [(1983) 1 SCC 305]*, the Hon'ble Supreme Court held that the antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deoki Nandan Prasad Vs. State of Bihar & Ors. [(1971) 2 SCC 330]*, wherein the Supreme Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive



pension flows to the officer not because of any such order but by virtue of the rules. The aforesaid view was reaffirmed in *State of Punjab & Anr. VS. Iqbal Singh [(1976) 2 SCC 1]*.

12. Regard being had to the facts of the case and the ratio laid down by the Hon’ble Supreme Court in the aforesaid decisions, I set aside the order impugned dated 17th December, 2014, as contained in Annexure-2, and direct the respondents to pay all the admitted post retiral dues as well as salary to the petitioner for the period January, 2012 if the petitioner has discharged her duty during that month, within three months from the date of receipt/production of a copy of the order

13. With the aforesaid observations and directions, the writ application is allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	25.01.2017
Transmission Date	

