

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17008 of 2015

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Damodar Yadav, Son of Late Chandra Kishore Yadav, Resident of Village -
Kharail Punarwas, P.S. + Dist.-Supaul

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Education,
Government of Bihar, Patna
2. The Director, Department of Primary Education, Government of Bihar, Patna
3. The Regional Deputy Director of Education, Koshi Division, Saharsa
4. The District Magistrate, Supaul
5. The District Education Officer, Supaul
6. The District Programme Officer (Establishment), Supaul
7. The Headmaster-cum-D.D.O., Middle School, Babhangama, Block-Triveniganj,
Dist.-Supaul
8. The Headmaster, Utkramit Middle School, Yogyachahi, Block-Triveniganj,
Dist.-Supaul
9. The Treasury Officer, Supaul
10. The Accountant General, Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Advocate

For the Respondent/s : Mr. Krishnakant Tiwari, AC to SC-27

For the Respondent-AG : Mr. Kinkar Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-01-2017

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Accountant



General.

2. With consent of the parties, the application is disposed of at the stage of admission itself.

3. In the present writ application the petitioner has prayed for quashing the office order dated 14.02.2014 as contained in Annexure-2 passed by the District Programme Officer (Establishment), Supaul vide Memo No.252 whereby a sum of Rs. 2,92,832/- has been ordered to be recovered from the amount of unutilized earned leave of the petitioner. The petitioner has also prayed for issuance of a direction to the respondents to make payment of the aforesaid amount of Rs. 2,92,932/- recovered from the earned leave of the petitioner.

4. The petitioner retired from service on attaining the age of superannuation on 30th June, 2012 from the post of Teacher from Upgraded Middle School, Yogyachahi. When the pension paper of the petitioner was forwarded for payment of his post-retiral benefits, it was pointed out that he had wrongly been allowed to work for nine months beyond 42 years of service, as his initial appointment in the school was made on 02.04.1969 and on this basis, his date of retirement ought to have been on 30th September, 2011. The respondents have, accordingly, directed the date of retirement of the petitioner to be shifted from 30th June,



2012 to 30th September, 2011 and a direction was made vide impugned Memo No. 252 dated 14.02.2014 to recover a sum of Rs. 2,92,832/- paid to the petitioner as salary between 01.01.2011 to 30th June, 2012 from the amount of earned leave.

5. The contention of the petitioner is that the petitioner discharged his duties as Teacher till the date of retirement on 30th June, 2012. He contended that the petitioner along with several other teachers was initially appointed by the Managing Committee of the school when they were below the age of 18 years and were allowed to work till they attained the age of 60 years.

6. It is contended that an exactly similar situation in the matter of *Ganga Ram Mahto vs. The State of Bihar and Others (C.W.J.C. No. 3235 of 2015)*, this Court vide order dated 26.02.2015 directed the respondents not to recover any amount of salary and emoluments paid to the petitioner as work was taken from him before passing the order for retirement. The Court had also directed the State Government and the Accountant General to make re-calculation of all his retirement benefits and also make payment of the admissible and payable amount within a period of four months from the date of receipt of a copy of the order. It was also ordered that if any amount of salary for the work done by the petitioner beyond 42 years had already been recovered, the same



must be refunded to him within the same period.

7. *Per contra*, learned counsel for the State would submit that the writ petition lacks merit, as admittedly the petitioner continued in service beyond 42 years, which is not permissible in law, as the minimum age for entering into government service is eighteen years and on completion of 42 years, an employee would retire, as he completes 60 years, which is the age of retirement. He submitted that in that view of the matter, the alleged recovery made by the respondents from the earned leave of the petitioner was fully justified.

8. However, he concedes that in case of **Ganga Ram Mahto** (supra), this Court has restrained the respondents from making recovery of any amount of salary for the work done by him beyond the date of retirement.

9. In view of the submissions made at the Bar, in my considered opinion, the question regarding entry into service by the petitioner at the age of less than 18 years cannot be raised at this belated stage. The issue was never raised by the respondent till the issuance of the impugned order dated 14.02.2014. Admittedly, the petitioner discharged his duties as teacher till 30.06.2012. There is no allegation on the part of the petitioner for continuance in service after attaining the age of superannuation. As a matter of fact, he



retired on attaining the age of retirement. There is no dispute to the date of birth of the petitioner rather the dispute is that minimum age for entering into service being 18 years, an employee can not be allowed to work for more than 42 years.

10. Considering the hardship which an employee may face on the issue of recovery from the post-retiral dues, the Hon'ble Supreme Court in *State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors. [(2015) 4 SCC 334]*, held that such recovery would be impermissible in law. In paragraph no.18 of the aforesaid judgment, the Hon'ble Supreme 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III Class IV and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.”

11. In view of the decision of this Court in **Ganga Ram Mahto** (supra) and the law laid down by the Supreme Court in **State of Punjab & Ors. vs. Rafiq Masih** (supra), this Court is of the considered opinion that the order dated 14.02.2014 passed by the District Programme Officer (Establishment), Supaul as contained in Annexure-2 to the present writ application whereby a direction has been issued to the Treasury Officer, Supaul to recover a sum of Rs. 2,93,832/- from the leave encashment of the petitioner cannot be sustained.

12. Accordingly, it is set aside.



13. The respondent, District Programme Officer, (Establishment), Supaul is directed to release the aforesaid amount to the petitioner within two months from the date of receipt/production of a copy of the order. It is made clear that in case of any delay in making the payment of the amount, the petitioner will be entitled to receive interest at the rate of 8 % per annum from the date it became due till the date of actual payment.

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

(Ashwani Kumar Singh, J.)

Sanjeet/-

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

