

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.18444 of 2015**

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Lakshman Mahto, Son of Late Ghonu Mahto, Resident of village - Koncho, P.S.-  
Silli, District - Ranchi (Jharkhand)

.... .... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna
2. The Director General of Police, Govt. of Bihar, Patna
3. The Superintendent of Police, Madhepura
4. The Superintendent of Police, Saharsa
5. The Accountant General, Bihar, Patna
6. The Senior Account officer, office of Accountant General, Bihar, Patna

.... .... Respondents

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**Appearance :**

For the Petitioner : Mr. Ebrahim Kabir, Advocate

Mr. Shruti Sinha, Advocate

For the Respondent-State: Mr. Rajiv Roy, GP-1

For the Respondent-AG : Mr. L.P.K. Rajgrihar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 16-01-2017**

The petitioner retired from the post of Assistant Sub-Inspector of Police, Madhepura on 31<sup>st</sup> of October, 2012. After retirement, he has been paid the amount of gratuity and earned leave provisionally. He has also been paid the deposited amount of provident fund.

2. The contention of the petitioner is that despite his retirement in October, 2012, the regular pension of the petitioner has not been fixed and the payment of pension is not being made.



3. Learned counsel for the State would submit that after retirement, the service book and pension papers of the petitioner were sent to the office of the Accountant General, Bihar, Patna, but the same returned due to the fact that wrong fixation of pay had been done in case of the petitioner with effect from 01.01.2006. He would submit that the Accountant General, Bihar pointed out that the pay of the petitioner should have been Rs.13,430/- on 06.01.2007, but the same was calculated at Rs. 14,430/- as a result of which, excess payment was made to the petitioner. He would submit that in view of the letter of the Accountant General, Bihar, the case of the petitioner was reviewed and it was found that a total amount of Rs. 1,53,433/- has been paid to the petitioner under different heads in excess to what he was entitled to. He would further submit that the petitioner has given his option of payment of pension from Ranchi, Jharkhand and in order to facilitate his payment of pension from Ranchi, the Superintendent of Police, Madhepura has repeatedly requested the petitioner to appear physically before the authority so that necessary steps in this regard may be taken, but the petitioner is not co-operating in the matter and is not appearing before the Superintendent of Police, Madhepura.

4. Learned counsel for the Accountant General would submit that the Accountant General has returned the service book and other papers of the petitioner vide letter dated 14.08.2016 suggesting the Superintendent of Police, Madhepura therein to recover the excess amount paid to the petitioner from his end so that special seal authority could be issued in favour of the petitioner, but till date no communication has been made by the Superintendent of Police, Madhepura after service book and other papers of the



petitioner were returned to him.

5. In reply, learned counsel for the petitioner submitted that the petitioner is being denied his right to pension since more than four years for no fault on his part. It is not the case of the respondents that the petitioner ever mis-represented or played fraud on the basis of which wrong fixation of his salary was made in the year 2006. He submitted that the petitioner would fully co-operate with the respondents and, if necessary, would furnish necessary papers and would also appear before the Superintendent of Police so that his payment of pension may be started without delay. He would further submit 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.

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

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

8. 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 and where recovery process is initially five years after excess payment. The Supreme Court in paragraph no.18 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.”*

9. In the present case, the State has made no allegation against the petitioner of either mis-representation or fraud. The State realized its mistake in fixation of pay only after it was pointed out by the Accountant General, Bihar, Patna.

10. Under such circumstances, in view of the ratio laid down in **State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors.** (supra), recovery of any amount paid in excess to what the petitioner was entitled to is impermissible in law.

11. In that view of the matter, I direct the petitioner to appear personally along with a copy of the order before the Superintendent of Police, Madhepura within three weeks from today and furnish all necessary papers as may be required for grant of pension. The Superintendent of Police, Madhepura shall forward all his documents along with the service book, etc. to the Accountant General for verification and authorization of pension and final gratuity within four weeks from the date of receiving necessary papers from the petitioner. The Accountant General, Bihar on receipt of forwarding of pension proposal shall issue special seal authority for payment of pension and final gratuity to the Accountant General, Jharkhand, Ranchi within three weeks. In case of failure on the part of the respondents, the petitioner would



be entitled to receive interest over the due amount at the rate of 8% per annum from the date it became due till the date of its actual payment.

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

**(Ashwani Kumar Singh, J.)**

Sanjeet/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 19.01.2017 |
| Transmission Date | NA         |

