

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18629 of 2008

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Daya Shankar Ojha, S/o Late Tung Nath Ojha resident of village Ojha Ke Semaria
Police Station Shahpurpatti, District Bhojpur (Ara)

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police , Bihar, office at Old Secretariat, Patna, Bihar
3. The Superintendent of Police, Bhojpur (Ara)
4. The District Provident Fund Officer, Bhojpur (Ara)
5. The District Accounts Officer Bhojpur (Ara)
6. The Accountant General (Accounts and Establishment) Bihar, Patna Office at
Birchand Patel Path, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Maya Shankar Mishra
For the Respondent/s : AC to SC No. 23
Mr. Dhanendra Choubey

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 30-03-2017

1. Heard Sri Maya Shankar Mishra, learned counsel for the
petitioner , learned AC to SC No. 23 as well as Sri Dhanendra
Choubey, learned counsel for the respondent /Accountant General,
Bihar.

2. The original petitioner, who superannuated on
31.1.2004 as Sub Inspector of Police had approached this court by
filing the present writ petition for the following reliefs:-

***“1. For issuance of a writ in the nature of
certiorari for quashing the District order
bearing no. 858/2006 dated 12.4.2006 issued
under the signature of Superintendent of
Police, Bhojpur by which order pay fixation
of petitioner vide District order no. 306/2005
was partially rectified and was refixed at Rs.***



7775/- per month.

II. For issuance of a writ in the nature of certiorari for quashing the order bearing memo no. 27200 dated 16.12.2006 issued by the office of Superintendent of Police, Bhojpur by which order excess payment of Rs. 1,18,252/- in question to the petitioner was deducted from the amount of gratuity of pension of petitioner by the Treasury Officer, Bhojpur

III. For issuance of a direction upon the respondents to fix the pension of petitioner on the basis salary Rs. 8475/- per month which was paid to the petitioner at the time of retirement.

IV. For issuance of direction upon the respondent to pay the due amount of General Provident Fund for the period 1965-1977 which was not calculated in the calculation chart given by the Provident Fund Officer, Bhojpur”

4. During pendency of this petition the sole petitioner died.

Thereafter, a substitution petition vide I.A. No. 104 of 2015 was filed by the legal heir, which was allowed on 21.3.2017 and the name of original petitioner was directed to be expunged from the record and name of legal heir was substituted. At the time of argument learned counsel for the petitioner has not pressed the relief in respect of claim of GPF amount for the period 1965-1977. The petitioner after his superannuation with effect from 31.1.2004 since was not paid his retiral dues had approached this court by filing a writ petition vide



CWJC No. 7131 of 2004. The said case along with other number of writ petitioners were heard together with CWJC No. 6000 of 2004 and the said writ petition was disposed of with general direction. Since order of the writ court was not being complied with, it is claim of the petitioner that he filed contempt petition and in the meanwhile 90% of pension was sanctioned to the petitioner fixing the pay scale as Rs. 8125/-. Thereafter two increments were granted and his salary had come to Rs. 8475/- and accordingly, provisional pension was paid to the petitioner. After filing of the contempt petition, according to learned counsel for the petitioner the respondents in a vindictive manner issued Annexure '2' to the present writ petition whereby his pay scale was modified even with effect from the year 1965. The pay scale of the petitioner was reduced to Rs. 7775/- and by subsequent order vide Annexure '3' to the present writ petition it was directed to recover the excess paid amount i.e. an amount of Rs. 1,18,252/-. In the writ petition a specific plea has been taken that neither before reducing the pay scale nor before issuance of order of recovery any show cause notice was issued to the petitioner, Unilaterally decision was taken by the Superintendent of Police regarding reduction of the pay scale as well as recovery of the amount. He submits that from the retiral dues i.e. pension and gratuity huge amount of Rs. 1,18,252/- has already been recovered. Learned



counsel for the petitioner has placed heavy reliance on a recent judgment of a Division Bench of this court reported in **2017 (1) PLJR 512 (The State of Bihar through its Chief Secretary & Ors. vs Gangadhar Singh)** . He submits that Division Bench of this court has also considered the judgment of the Apex Court reported in 2015(1) PLJR (SC) 261 (**State of Punjab and Ors. etc. vs. Rafiq Masih (White Washer) etc.**). He submits that this court has categorically held that even though pay scale is incorrectly fixed, without notice to the employee there can be no order for reduction of pay scale. He further submits that so far the recovery part is concerned the said Division Bench had followed the direction of the Hon'ble Supreme Court in Rafiq Masih case (supra) particularly paragraph no. 12 of the judgment and thereafter, directed for refunding the recovered amount. Accordingly a prayer has been made to quash Annexure '2' and '3' and fix his pension treating his pay scale as Rs. 8475/- and also refund the recovered amount with interest.

5. In this case a counter affidavit has been filed on behalf of the respondent no. 3 . Learned State Counsel has justified the action of the Superintendent of Police by which pay scale was reduced and also recovery was effected however he was not in a position to satisfy the court as to whether both the orders were passed after asking any explanation from the petitioner. Meaning thereby, that action of



respondents in reducing pay scale as well as recovery of huge amount from pension and gratuity of the petitioner is contrary to the settled principles of law. At this juncture the court proposes to incorporate paragraph no. 12 of the Rafiq Masih Case (Supra)which is follows:-

“12. 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, 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 out-weigh the equitable balance of the employer's right to recover."

6. Same judgment was recently followed by a Division Bench of this court in Gangadhar Singh case (supra) and as such, the court is of the opinion that no different order is required to be passed in the present case. In view of the direction of the Apex Court since the petitioner superannuated while holding Class III post, after retirement there was no question for any recovery. Since the order of recovery was also passed in violation of the principle of natural justice that no explanation was asked from the petitioner, such order is liable to be set aside. Accordingly, order contained in Annexure – '3' whereby direction was given for recovery of the amount of Rs. 1,18,252/- from pension and gratuity of the petitioner and said amount has already been deducted, the order is hereby set aside with a direction to the respondents to refund the said recovered amount to the petitioner within a period of three months from the date of receipt / production of a copy of this order. So far reduction of pay scale is



concerned following the direction passed by Division Bench of this court in Gangadhar Singh case (Supra) the said order i.e. Annexure ‘2’ is also set aside granting liberty to the respondents to pass appropriate order after granting opportunity of hearing to the petitioner.

7. Accordingly, the writ petition is partly allowed as indicated hereinabove.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04 -04-2017
Transmission Date	NA

