

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14765 of 2016

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Satrudhan Singh son of Late Leela Singh, resident of village- Gyanpur, P.S.-
Barhara, District- Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. D.G. of Police, Bihar, Patna.
3. S.P. Katihar.
4. Sargent Major Police Line, Katihar.
5. Director, Rajbhasha, Bihar, Patna.
6. Accountant General, Bihar, Patna.
7. Senior Accounts Officer, office of the Accountant General (A & E), Bihar, Patna.
8. The Treasury Officer, Arrah (Bhojpur).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ebrahim Kabir, Advocate
: Ms. Shruti Sinha, Advocate
For the Respondent/s : Mr. Suman Kumar Jha, A.C. to A.A.G.-3

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-02-2017

Whether recovery of excess amount paid to a class three employee due to employer's mistake from retiral dues of the employee is permissible in law is the question involved in the present case.

2. The petitioner was appointed on the post of Constable on 30th April, 1973. He retired from the post of Havildar on attaining the age of superannuation on 30th April, 2014.

3. The contention of the petitioner is that entire service record of the petitioner was blotless. He received yearly increments



from 9th August, 2000 to 1st July, 2012 on the basis of his pay fixation under Second Assured Career Progression Scheme (for short 'ACP'). Subsequently, vide memo no.35 dated 3rd June, 2014 the Superintendent of Police, Katihar called for an explanation from the petitioner as to why recovery be not made of the excess payment made to him as he was granted benefits of ACP between 9.8.2000 till 1.7.2012 without passing Hindi Noting and Drafting Examination.

4. The petitioner challenged the action of the State by filing C.W.J.C. No.6491 of 2015 before this Court wherein prayer was made for issuance of direction to the respondents not to recover and withdraw the benefit of yearly increments granted to him from 9.8.2000 to 1.7.2012 as per pay scale fixation done under the second ACP.

5. The matter was heard by this Court and vide order dated 8.2.2016, this Court directed that till such order is passed by the Superintendent of Police, Katihar, no recovery is required to be made. Thereafter, the Superintendent of Police, Katihar vide order dated 18th July, 2016 passed an order whereby direction has been issued to recover Rs.7,05,088/- (seven lakh five thousand eighty eight) from retiral benefits of the petitioner.

6. The aforesaid action of the respondent Superintendent of Police, Katihar whereby an order for recovery has been made from the



retiral benefits of the petitioner is under challenge in the present writ application.

7. Learned counsel for the petitioner submitted that since there was no misrepresentation or fraud played by the petitioner in grant of benefits of second ACP, the amount which was paid to him while he was in service, cannot be recovered from the pensionary benefits of the petitioner.

8. In support of his contention he has placed reliance on the decision of the Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors. [(2015) 4 SCC 334]*.

9. On the other hand, learned counsel for the State submitted that it is not a case of recovery of amount from the retiral benefits of the petitioner rather it is a case of adjustment of excess payment made to the petitioner while he was in service as he had not passed Hindi Noting and Drafting Examination without which the benefits of second ACP could not have been extended to him. He submitted that due to fault on the part of drawing and disbursing officer, the petitioner was given benefit of yearly increments from 9.8.2000 to 1.7.2012. As the petitioner retired on attaining the age of superannuation on 30th April, 2014 and the matter came to the notice of the Superintendent of Police, Katihar after his retirement, there was no occasion to recover the amount from salary of the petitioner while



he was in service. Hence, the respondents have taken a decision to adjust the amount from retiral benefits pursuant to the order passed by this Court.

10. I have heard learned counsel for the parties and perused the record. I find substance in the arguments advanced by the learned counsel for the petitioner.

11. In *State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.* (supra), the Supreme Court held that recovery of excess amount paid to class-III and IV 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 was also directed that an employer cannot recover excess amount in case of a retired employee or one who is to retire within one year.

12. In the present case, the State has made no allegation against the petitioner of either misrepresentation or fraud. It is a simple case in which the State realized its mistake in fixation of pay after retirement of the petitioner. As a matter of fact the impugned order has also not been passed under the orders of this court rather this court had directed that till such order is passed by the Superintendent of Police, no recovery is required to be made. Since no order of recovery was passed prior to disposal of C.W.J.C. No. 6491 of 2015,



this court had no occasion to examine the legality of such order.

13. Under such circumstances, in view of the ratio laid down by the Hon'ble Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.* (supra), recovery or adjustment of any amount paid in excess to the petitioner, a Havildar (class-III post) is impermissible in law. In that view of the matter, District Order No.1172/2016 corresponding to memo of no.2305 dated 16.7.2016 issued under the signature of Superintendent of Police, Katihar as contained in annexure-12 and the order dated 18.7.2016 bearing memo no.418 passed by the Superintendent of Police, Katihar as contained in annexure-10 to the present application whereby direction has been made to recover the excess amount paid to the petitioner from his retiral dues, are hereby quashed. The respondents are directed to make payment of all the admissible retiral dues to the petitioner forthwith.

14. The writ application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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