

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1582 of 2016

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Smt. Sushma Kumari, Wife of Sri Prem Kumar Sinha, Resident of in between M.I.G.- 26 & 27, M.I.G. Colony, Hanuman Nagar, P.S.- Kankarbagh, District-Patna, at present working as Librarian at Jagjivan Ram Institute of Parliamentary Studies and Political Research, 10, Mangles Road, Patna

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. Principal Secretary, Education Department, Govt. of Bihar, Patna
3. Principal Secretary, Finance Department, Govt. of Bihar, Patna
4. Secretary, Education Department, Govt. of Bihar, Patna
5. Jagjivan Ram Institute of Parliamentary Studies and Political Research, 10, Mangles Road, Patna through its Director, 10, Mangles Road, Patna
6. The Director, Jagjivan Ram Institute of Parliamentary Studies and Political Research, 10, Mangles Road, Patna
7. Director, Higher Education, Education Department, Govt. of Bihar, Patna
8. Deputy Director, Higher Education, Education Department, Govt. of Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ravi Bhardwaj, Adv.
Ms. Soni Srivastava, Adv.

For the Respondent/s : Mr. Dinesh Maharaj, AC to AAG-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-10-2017

Heard Mr. Ravi Bhardwaj, learned counsel appearing on behalf of the petitioner and Mr. Dinesh Maharaj, learned Assisting Counsel to Additional Advocate General No.11 for the State.

The petitioner has questioned the order dated 22.6.2015 of the Deputy Director, Higher Education, Department of Education, Government of Bihar, Patna, whereby the Deputy Director has instructed the Director, Jagjivan Ram Institute of Parliamentary Studies and Political Research, Patna (hereinafter referred to as 'the Institute') to recover the excess salary paid to the petitioner on



account of incorrect fixation of her pay at the time of her appointment which, according to the Deputy Director, Higher Education, should have been in the scale of Rs.1200-1800/- instead of Rs.1400-2300/- as provided to the petitioner.

The direction as contained in the letter of the Deputy Director impugned at Annexure-13 is followed by the order of the Director of the 'Institute' bearing Memo No.147 dated 30.5.2016 on similar lines and while fixing the scale of the petitioner in scale of Rs.1200-1800/- with effect from 1.1.1986 as per the Fourth Pay Revision Commission, in the scale of Rs.4000-6000/- with effect from 1.1.1996 as per the Fifth Pay Revision Commission and in Pay band-1 + 2400/- with effect from 1.1.2006 as per the Sixth Pay Revision Commission, it has been assessed that the petitioner has drawn excess amount of Rs.4,65,382/- and which requires a recovery @ Rs.6744/- per month in 68 equal monthly installments. A copy of the office order dated 30.5.2016 of the Director of 'the Institute' is impugned at Annexure 14 to I.A. No.4681 of 2016 and considering that it is consequential to the main relief prayed in the writ petition, the prayer made in the interlocutory application is allowed and the petitioner is permitted to question the said order in the present proceedings.

I.A. No.4681 of 2016 is allowed.



Facts of the case leading to the order impugned briefly stated is that the petitioner was initially appointed by the Jagjivan Ram Institute of Parliamentary Studies and Political Research, then a private institution, on honourary basis in the year 1988 as a Librarian in the scale of Rs.785-1210/- and which appointment was subsequently confirmed by the 'Institute' vide office order dated 15.5.1989 present at Annexure-3. The 'Institute' in question was taken over by the State Government in its Education Department vide resolution passed under section 3 of the Bihar Non-Governmental Educational Institution (Taking Over) Ordinance, 1986 on 5.1.1987. By a subsequent order passed by the Human Resources Development Department bearing No.1282 dated 6.8.2009, the services of the employees of 'the Institute' were taken over.

As the service conditions of the employees whose services were taken over by the State were not determined that they moved this Court in CWJC No.4821 of 2011 (Ravindra Nath Sinha Vs. the State of Bihar) and other writ petitions which were heard analogous and vide judgment and order dated 28.9.2011 the writ petitions were disposed of on the submission of the State Government that the grievance raised in the writ petition was under active consideration of the State. A copy of the judgment and order passed in CWJC



No.4821 of 2011 and analogous cases is present at Annexure-5 to the writ petition.

A meeting of the Committee constituted for approval of the posts was held on 13.7.2012 which considered the case of the petitioner as well, whose name appears at serial no.25 and the Committee proceeded to approve six posts inclusive of the post of Librarian whose scale was approved in PB-1 +2400/- . The approval to the posts granted by the Committee was followed by a letter of the Education Department addressed to the Accountant General confirming the creation of the posts with retrospective effect and in so far as the post of Librarian is concerned sanction was accorded for creation of post with effect from 31.5.1989. A copy of the letter dated 31.01.2013 of the Special Secretary, Department of Education is present at Annexure-7 to the writ petition.

Vide a subsequent order bearing Memo No.1375 dated 25.7.2013 the Joint Secretary, Department of Education confirmed the position of the petitioner on the sanctioned post of Librarian with effect from 31.5.1989 which is present at Annexure 8. The salary of the petitioner under the Fifth Pay Revision Commission was fixed at Rs.4000-6000/- with effect from 1.1996 and under the Sixth Pay Revision Commission in Pay Band-1 + 2400/- with effect from 1.1.2006 as manifest from the letter of the Education Department



bearing Memo No.756 dated 3.4.2014.

The petitioner not being satisfied by the pay fixation raised a grievance for fixation of her salary in the scale of Rs.5000-8000/- with effect from 1.1.1996 and in Pay Band-2 + 4200 with effect from 1.1.2006 through her representation dated 3.2.2014 present at Annexure-12. The matter was examined and the Deputy Director, Higher Education vide letter dated 22.6.2015 found error in the initial fixation of the petitioner in the scale of Rs.1400-2300/- which, according to the Deputy Director, Higher Education, should have been in the scale of Rs.1200-1800/-. Accordingly the Deputy Director, Higher Education vide his order dated 22.6.2015 directed the Director of 'the Institute' to revise the pay fixation of the petitioner with further direction that the excess salary drawn by the petitioner be recovered. The petitioner feeling aggrieved by the directions contained in the letter dated 22.6.2015 impugned at Annexure 13 moved this Court and while the writ petition is pending that the pay fixation order has been issued by the Director of 'the Institute' on 30.5.2016 which has been placed on record through interlocutory application vide Annexure-14. On the basis of the revised pay fixation, an amount of Rs.4,65,382/- is stated to have been paid in excess to the petitioner and which is sought to be recovered in 68 equal monthly installments of Rs.6744/- per month.



Feeling aggrieved the petitioner is before this Court.

This writ petition was heard and admitted vide order passed on 11.08.2016 but the coordinate Bench while admitting the writ petition did not stay the recovery order rather the same was made subject to the outcome of the writ petition.

While it is the submission of Mr. Ravi Bhardwaj, learned counsel for the petitioner, in reference to Annexure 11 as well as Annexure 'A' to the counter affidavit filed on behalf of the respondents that not only the replacement scale of Rs.785-1210 which the petitioner was drawing at the time when her services were taken over by the State under the 4th Pay Revision is Rs.1400-2600 and under 5th Pay Revision it is Rs.5000-8000, the scale of Librarian is even higher as is manifest from bare perusal to the sanction granted in relation to a similarly placed institute, namely, Kashi Prasad Jaiswal Research Institute, which was taken over by the State in the like manner as 'the institute' of the petitioner. He, thus, submits that in so far as grant of scale of Rs.1400-2600 under 4th Pay Revision and Rs.5000-8000 under 5th Pay Revision is concerned, there is absolutely no illegality since the replacement scale of a Librarian under 4th Pay Revision was even higher as manifest from the benefit granted to the Librarian of Kashi Prasad Jaiswal Research Institute is concerned that the petitioner represented vide his representation dated 3.2.2014 but



has been visited with the impugned orders without application of mind and without adjudicating on the issue. Mr. Bhardwaj has relied upon a judgment of the Supreme Court rendered in the case of **State of Punjab v. Rafiq Masih**, reported in 2015(1) PLJR 261 (S.C.), to support that even if there was an error in initial fixation of pay, the benefit drawn by the petitioner cannot be recovered.

The argument of Mr. Bhardwaj has been contested by Mr. Dinesh Maharaj, learned AC to AAG-11, to submit that sanction of scale was given vide order No. 206 dated 31.1.2013 with consequential order bearing Memo No. 756 dated 3.4.2014, copies of which are placed at Annexures 7 to 9 to the writ petition. He next refers to the counter affidavit to submit that since the scale granted to the Librarian of the Jagjivan Ram Institute of Parliamentary Studies and Political Research Institute was in Pay Band-1 + 2400/- (grade pay) with effect from 31.5.1989, during the course of examination it transpired that the prervised of Pay Band-1+ 2400 (grade pay) was Rs.4000-6000 under 5th Pay Revision which in turn was the replacement scale of Rs.1200-1800 under the 4th Pay Revision. It is submitted that since the petitioner was incorrectly granted the scale of Rs.1400-2600 instead of Rs.1200-1800/- under the 4th Pay Revision and Rs.5000-8000 instead of Rs.4000-6000/- under the 5th Pay Revision, which was in conflict with the scale sanctioned to a



Librarian of the taken-over institute i.e. in Pay Band-1 + 2400/- (grade pay) that the impugned order of recovery has been passed. He submits that it is following such error that the petitioner was paid an excess amount of Rs.4,65,382/- and which is sought to be recovered by the order impugned bearing Memo No. 147 dated 30.5.2016 which suffers from no infirmity.

I have heard learned counsel for the parties and have perused the records.

Two issues fall for consideration in the present case, namely,

- (a) Whether the scale initially sanctioned to the petitioner after the institute in question was taken over i.e. Rs.1400-2600 under the 4th Pay Revision and Rs.5000-8000 under the 5th Pay Revision suffers from any infirmity even if the State Government in its Education Department finally determined the scale of Librarian in Pay Band-1 + 2400/- with effect from 31.5.1989; and
- (b) Whether the benefit drawn by the petitioner by virtue of such fixation can be



recovered?

It is not in dispute rather confirmed that the petitioner was drawing his salary in the scale of Rs.785-1210 when the institute in question was taken over by the State and the services of the employee including the petitioner were taken over vide Annexure 4. The sequence of events discussed hereinabove would show that since consequential action of the State was missing after a decision was taken to take over the institute in question which forced the employees to move this Court and it is on remand of the matter vide judgment and order placed at Annexure 5 that it resulted in the decision of the Prashashi Padvarg Samiti dated 13.7.2012, whereby several posts were sanctioned including the post of Librarian, in 'the institute' as confirmed by Item No. 25 of the resolution placed at Annexure 6. It is following the decision of the Committee that the communication was given to the Accountant General vide Annexure 7 and formal orders were issued vide Annexure 8 on 25.7.2013. The orders at Annexures 7 and 8 would again confirm that the scale of a Librarian was fixed in Pay Band-1 + 2400/- with effect from 31.5.1989. The petitioner in the meanwhile had drawn his salary as per replacement scale during this interregnum period and since the replacement scale of Rs.785-1210 which the petitioner was drawing as a Librarian when his services was taken over, under the 4th Pay Revision was Rs.1400-2600 with effect



from 21.1.1986 and Rs.5000-8000 under 5th Pay Revision with effect from 21.1.1996 that the petitioner drew his salary benefit in terms of the said replacement scale and it is this benefit drawn, which is sought to be recovered since according to the respondents this was an incorrect fixation.

I have already discussed the issues which fall for consideration. Annexure 'A' to the counter affidavit mentions the replacement scale under 4th Pay Revision and the 5th Pay Revision and in so far as the post of Librarian is concerned, what I notice is that the Librarian in Kashi Prasad Jaiswal Research Institute, a private institute which was taken over by the State in a similar manner as 'the institute' of the petitioner, was sanctioned a scale under 4th Pay Revision at Rs.1500-2750 with replacement scale of Rs.5000-8000 under 5th Pay Revision.

In so far as the replacement scale of Rs.785-1210 is concerned, which is the scale in which the petitioner was drawing her salary when her services were taken over, the chart at Annexure 'A' would confirm that the replacement scale of Rs.785-1210/- under the 4th Pay Revision was Rs.1400-2600 with effect from 1.1.1986 and under 5th Pay Revision i.e. with effect from 1.1.1996 it was Rs.5000-8000. Obviously it is on the basis of such replacement scales to the scale drawn by the petitioner when her services was taken over that



she drew her salary until the pay fixation in question and which apparently demonstrates no illegality. In fact the benefits granted to a similarly placed Librarian in Kashi Prasad Jaiswal Research Institute is much better than the salary drawn by the petitioner as a Librarian. It is a strange matter that when ultimately the scales were sanctioned to the staff of 'the Institute' in compliance of the orders of this Court vide order present at Annexures 7 and 8 respectively, it sanctioned scales which was lower than what the petitioner had drawn at the time of take over of her services.

The issue, which Mr. Bhardwaj endeavours to raise, is whether the State can be permitted to discriminate amongst the same set of employees holding the post of Librarian and whether the petitioner can be placed at a lower position than she was when her service was taken over.

It is not in dispute that both the Kashi Prasad Jaiswal Research Institute as well as 'the institute' in which the petitioner was employed were taken over by the State Government and while a Librarian in Kashi Prasad Jaiswal Research Institute has been sanctioned a salary at a much higher scale, the replacement scale granted to the petitioner is at a lower scale. The replacement scale of Rs.785-1210 which the petitioner was drawing at the time of her take over of services, is Rs.1400-2600 under the 4th Pay Revision and



Rs.5000-8000 under the 5th Pay Revision as confirmed from the own document of the respondents at Annexure 'A' to the counter affidavit. The petitioner having drawn her salary accordingly, is now being denied on plea of wrong fixation.

The argument advanced by Mr. Bhardwaj to question the orders impugned, holds substance on a simple glance of replacement scales given to the Librarian in the Kashi Prasad Jaiswal Research Institute as present at Annexure 'A' because neither the petitioner can be discriminated in the matter of fixation of scale on the post of Librarian nor there can be arbitrariness in such decision. The petitioner was drawing her salary in the scale of Rs.785-1210 and in terms of the chart present at Annexure 'A' the replacement scale of an employee drawing salary in the scale of Rs.785-1210 is Rs.1400-2600/- under the 4th Pay Revision and Rs.5000-8000 under the 5th pay revision. On the other hand, the replacement scale sanctioned to a Librarian is even higher. The petitioner did raise this issue in her representation present at Annexure 12 before the Principal Secretary, Education Department but which has not been considered effectively, rather it is proceeding in a reverse manner on the basis of the fixation at Annexures 7 and 8 that the orders impugned have been passed.

In the circumstances discussed, the grievance raised by the petitioner seeking a replacement scale of a Librarian as admitted to a



Librarian of Kashi Prasad Jaiswal Research Institute or the replacement scale as admissible to an employee drawing salary of Rs.785-1210 merits consideration and requires a disposal by a speaking order by the Principal Secretary of Education Department bearing in mind the replacement chart present at Annexure 'A' to the counter affidavit. The orders impugned at Annexures 13 and 14 do not answer the issue raised by the petitioner. Besides, the judgment of the Supreme Court in the case of **Rafiq Masih** (supra) relied upon by the petitioner settles the legal position on recovery and even if the petitioner became the beneficiary of an alleged incorrect scale fixation but since the benefit had not been drawn by the petitioner by suppression of fact or misrepresentation, in view of the position settled by the Supreme Court extendable to all the employees holding Class III post, the recovery, in any case, could not have been affected.

In the circumstances discussed, the directions so contained in the order of the Deputy Director, Higher Education dated 22.6.2015 impugned at Annexure 13 together with the order of the Director of 'the Institute' bearing Memo No. 147 dated 30.5.2016 impugned at Annexure 14 cannot be upheld and are accordingly quashed and set aside. In the nature of claim raised, the petitioner is given liberty to raise her grievance for fixation of her scale with supporting facts and figures before the Principal Secretary, Education Department and it



goes without saying that any such representation filed by the petitioner would be considered and be disposed of by the Principal Secretary, Education Department in accordance with law by a speaking order within a period of three months from the date of filing of such representation.

The orders of recovery having been quashed, the refund of amount already recovered from the petitioner would be subject to outcome of the representation filed by the petitioner.

The writ petition is allowed with the directions aforementioned.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.11.2017
Transmission Date	NA

