

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10160 of 2016

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Gajendra Jha, S/o Late Maharudra Jha, Resident of Village- Rahua Sangram, P.O.-
Rahua Sangram, P.S.- Bheja, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Water Resources, Bihar, Patna.
3. The Engineer-in-Chief, Water Resources Department, North Bihar, Muzaffarpur.
4. The Chief Engineer, Water Resources Department, Darbhanga.
5. The Executive Engineer, West Koshi Canal Division, Jhanjharpur, Darbhanga.
6. The Treasury Officer, Jhanjharpur, Darbhanga.
7. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pankaj Kumar Jha, Advocate
For the State	:	Mr. P. K. Verma, A.A.G. 3
		Dr. Mankeshwar Singh, A.C. to A.A.G. 3
For the A.G. Bihar	:	Mr. Anjani Kumar Sharan, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 19-12-2017

Heard learned counsel for the petitioner; State and
Accountant General.

2. The petitioner has moved the Court for the following
reliefs:

“(i) For issuance of an appropriate direction/s, order/s, writ/s to the respondents, especially respondent no.-6 to pay the pension to the petitioner as per PPO no.- 201511151616 which has been issued by the respondent no.-7 in favour of the petitioner on 21.12.2015 and the petitioner deposited the said PPO with the respondent no.-6 in January 2016 but till his pension has not been paid.

(ii) For issuance of an appropriate writ/s, order/s, direction/s to the respondents pay interest at the rate of 12% for not paying the pension to the



petitioner within stipulated time even though, the respondent no.-7 issued the PPO;

(iii) To pass such other order or orders as your lordships may deem fit and proper in the facts and circumstances of the case.”

3. Today, in sum and substance, the grievance is that despite the petitioner having superannuated, receiving a particular scale of pay, after provisional pension being fixed, after 5-6 months, when final pension was fixed, it has been done so in a reduced scale.

4. Learned counsel for the petitioner submitted that the petitioner, in service, got benefit of an enhanced pay scale, but having superannuated, the law requires that pension has to be fixed on the basis of last pay drawn, and initially the provisional pension was also rightly fixed taking into consideration the same but thereafter, for no valid reason, the final fixation has been made on notionally reduced pay scale. He further submitted that the recovery made from the petitioner be refunded. Learned counsel drew the attention of the Court to judgment of a co-ordinate Bench of this Court in C.W.J.C. No. 17796 of 2015 and analogous cases dated 09.02.2016, by which similarly situated persons from whom recovery has been made on similar ground have been granted relief by directing refund of the recovered amount and the State Government has further been directed to reconsider the matter with regard to entitlement, which is still pending.



5. Learned counsel for the State submitted that in view of the notification of the Finance Department dated 16.07.2015, benefit was given to the petitioner for a few months but the said letter was followed by another notification of the Finance Department dated 14.09.2015, by which the benefit given to all persons, including the petitioner, has been held to be incorrect and direction given for recovery. Learned counsel submitted that the petitioner superannuated on 30.11.2015 and, thus, he got the benefit for a few months and initially, on the basis of his last pay drawn, which was after getting the benefit of the notification of the State Government dated 16.07.2015, provisional pension was fixed in a higher scale but later, taking into consideration the notification of the State Government dated 14.09.2015, when final pension was being fixed, the error having been detected, the same has been rectified.

6. Having considered the matter, the Court finds that the recovery made from the petitioner cannot be sustained, both in view of the decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported as **(2015)4 SCC 334** as well as in C.W.J.C. No. 17796 of 2015 (supra). However, if excess payment has wrongly been made to the petitioner under some mistake, the State cannot be precluded from correcting the mistake for the purpose of finally computing the pension. Thus, the petitioner, as of



now, can only get the pension in the scale to which he is entitled and not on the basis of what he had actually drawn at the time of his superannuation. However, if in future, pursuant to the order of the Court dated 09.02.2016 passed in C.W.J.C. No. 17796 of 2015, the State Government takes a decision on the issue, which favours the petitioner, he shall be at liberty to represent before the authorities concerned to give the benefit to him also.

7. Accordingly, the writ petition stands disposed off with a direction to the authorities to refund the amount which has been recovered from the petitioner, within four weeks from the date of production of a copy of this order before respondent no. 6. The petitioner shall be at liberty to file an application before the competent authority in future depending on the decision taken by the State Government pursuant to the order of the co-ordinate Bench in C.W.J.C. No. 17796 of 2015 and analogous cases.

(Ahsanuddin Amanullah, J.)

P. Kumar

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