

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4579 of 2016

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Lalan Prasad Rajak @ Lalan Rajak Son of Sri Baban Prasad Rajak, Resident of Machhua Toli, Arya Kumar Road, Patna- 800004, Retired as Clerk, District Accounts Officer, Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Patna
3. Deputy Collector, Establishment, Collectorate, Patna
4. District Accounts Officer, Patna
5. District Provident Officer, Patna
6. Managing Director, Bihar State Food and Civil Supply Corporation, Daroga Rai Path, Patna
7. Provident Fund Commissioner, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s :
For the EPFO : Mr. Rajoday Satyajeet, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-11-2017

Heard learned counsel for the petitioner; State;
Employees Provident Fund Organisation and Bihar State Food and
Civil Supplies Corporation.

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

*“That this writ application is for issuance of a
direction to the Respondents to pay the Petitioner
the amount of E.P.F. Gratuity, Leave
Encashment, Group Insurance, salary for July
2013 D.A. for January 2015 to April 2015,*



Arrears of 6th Pay Revision from 8.3.2006 to 31.7.2010 (Revised pay from 1.4.2007 and unrevised pay from 8.3.2006 to 31.3.2007) and quash the order of recovery dated 16.9.2015 issued by the Respondent No. 3 vide Memo No. 2224 as contained in Annexure 3.”

3. As of now, the only grievance remaining is that Rs. 3,44,374/- has been retained by the authorities on account of the petitioner having wrongly drawn excess salary to which he was not entitled due to non-passing of Hindi Noting and Drafting and Computer Test Examination.

4. Learned counsel for the petitioner submitted that the requirement of such passing of examination was not a condition precedent to the petitioner having been granted a higher pay and further that such recovery sought to be made after his retirement is impermissible in view of the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported as **(2015) 4 SCC 334**. He further drew the attention of the Court to order passed by a co-ordinate Bench dated 19.08.2017 in C.W.J.C. No. 14153 of 2015 in the case of **Kaushal Kumar Verma Vs. The State of Bihar & Ors.** by which the Court relying on the aforesaid decision of the Hon'ble Supreme Court has held that no recovery can be made.



5. However, on the basis of materials on record, the fact that there is no automatic exemption from passing of Hindi Noting and Drafting Examination, which is a pre-requisite for getting the benefit for any increment for increase of pay and admittedly, in the present case, the same not having been cleared by the petitioner, the Court is unable to interfere in the matter. Thus, strictly speaking, the case would not come under the conditions laid down by the Hon'ble Supreme Court in the case **State of Punjab v. Rafiq Masih** (supra) for the reason that in the present case, the petitioner was an Accounts Clerk and, thus, it has to be presumed that he was fully aware of the relevant Rules and the amount which was payable to him. Thus, by sheer dint of the position he was holding, the plea of there being no role attributable to him for such excess payment cannot be accepted, even if something has been wrongly paid and which was in excess of his entitlement, he being an Accounts Clerk is presumed to be aware of the same and was required to point out to the authorities.

6. At this juncture, the Court would also indicate that neither is there any assertion in the writ petition to the fact that the petitioner was not involved in preparing his own pay slip, him being an Accounts Clerk, it would also be presumed that he had some role in preparation of the pay slip of the employees of the office which



included the petitioner himself. The further distinction is that the present cannot be said to be a case of recovery as it is mere adjustment for an error committed by the authorities in making excess payment and the same having been done from the public exchequer, there cannot be any estoppel against such distinction, if it is by way of correcting a mistake.

7. At this juncture, Mr. Anjani Kumar, learned senior counsel, appearing for the Bihar State Food and Civil Supplies Corporation drew the attention of the Court to the judgment of the Hon'ble Supreme Court in the case of **High Court of Punjab & Haryana v. Jagdev Singh** reported as (2016) 14 SCC 267. He submitted that the case of **State of Punjab v. Rafiq Masih** (supra) has been considered and then it has been held that if there was a condition at the time of granting some extra benefit of a higher post with the stipulation that, in future, if any infirmity is found, the excess amount may be adjusted/recovered, it was liable to be refunded, and the same was accepted by the employee, the authorities exercising that option could not be faulted and the same was permissible.

8. Having considered the matter, in view of the discussions made hereinabove, where on merits, learned counsel for the petitioner has not been able to show that he was exempted from



passing Hindi Noting and Drafting and Computer Test Examination and also taking note of the decision of the Hon’ble Supreme Court in the case of **High Court of Punjab & Haryana v. Jagdev Singh** (supra), the Court finds that in the facts and circumstances of the present case, the adjustment of excess payment made to the petitioner cannot be said to be arbitrary or impermissible.

9. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

Anjani/-

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