

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9320 of 2017

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Janki Ram Jha, Son of Late Nitya Nath Jha, resident of Village- Naruar, P.S. Bhairavstan, District Madhubani at present RZ 84, 2nd Floor, Gali No. 3 (Hanuman Mandir) Raghu Nagar, Pankha Road, New Delhi 110045

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Information and Public Relation, Patna
 2. The Principal Secretary, Department of Information and Public Relation, Patna
 3. The Director, the Directorate of Information and Public Relation, Govt. of Bihar, Patna
 4. The Resident Commissioner, Bihar Bhawan, New Delhi
 5. The Assistant Director, Bihar Information Centre, Baba Khadak Singh Marg New Delhi- 110001
 6. The Accountant General Bihar Vir Chand Patel Marg, Patna
 7. The Assistant Accountant General, Bihar
- Respondents
- =====

Appearance :

For the Petitioner : M/s Gajendra Kumar Jha, Bam Bahadur Jha & Surya Kant Mishra, Advs.

For the State : Mr. Mithilesh Kumar Upadhyaya, AC to GP III

For the AG : Mr. Udai Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 10-01-2018

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

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

“(i) The impugned order as contained in Memo no. 91 dated 14.06.2017 (Annexure 2) whereby a sum of Rs.6,51,629/- has been ordered to be recovered out of the gratuity amount of Rs.7,99,549/- only be quashed.

(ii) The office order no. 136 dated 08.06.2017 (Annexure 1) whereby the pay scale of the petitioner has been reduced to the pay scale of Rs.580-860/- i.e. pay scale of Clerk from



the pay scale of Rs.785-1210/- i.e., the pay scale of assistant, in arbitrary manner, be quashed.

(iii) The respondents be restrained from making any recovery out of the post retiral benefits payable to the petitioner and he further commanded to return that a sum of Rs.4,92,000/- which has been recovered out of payment against unutilized leave, vide office order no. 137 dated 12.06.2017.

(iv) The petitioner be extended any other relief/reliefs for which he found entitled.”

3. The petitioner was initially appointed as Office Assistant by order dated 03.04.1983 in the Information and Public Relations Directorate, Government of Bihar, in the pay scale of Rs.580-860 in its Delhi office. Later on, by office order dated 29.08.1987, the pay of the petitioner was approved in the scale of Rs.785-1210. The petitioner continued to derive benefits in the scale of Rs.785-1210 and finally superannuated on 31.05.2015. When his pensionary benefits were being processed, the authorities have taken a stand that his fixation of pay in the scale of Rs.785-1210 was not proper as he was initially appointed in the scale of Rs.580-860 and without there being any justification in law, his pay was approved in the scale of Rs.785-1210 and, thus, after calculating the excess payment drawn by him, there was an order of recovery from his pension and gratuity of over rupees eleven lakh which has also been made. The same is under challenge in the present writ application.

4. Learned counsel for the petitioner submitted that though his initial appointment was in the scale of Rs.580-860 but subsequently in the year 1987, he was granted scale of Rs.785-1210 and thereafter he was receiving the same without any objection from any quarter and also got various in service benefits including increments, two ACPs and one



MACP. Learned counsel submitted that the order, impugned, without giving any show cause notice to the petitioner cannot be sustained and further, that the Hon'ble Supreme Court has also held in various cases that recovery cannot be made from persons who had superannuated and had no role in any wrong fixation or having drawn any amount more than what they were entitled to in law. It was further submitted that it is also not the stand of the authorities that there was any fraud or misrepresentation by petitioner.

5. Learned counsel for State submitted that the petitioner having been appointed with effect from 01.03.1983 in the scale of Rs.580-860 suddenly was granted the scale of Rs.785-1210 on 29.08.1987 without there being any legal justification or a link for such enhancement of the scale. It was submitted that there cannot be any estoppel against any error committed by the State authorities, more so, in financial matters where the money comes from public exchequer. Learned counsel submitted that the petitioner having wrongly drawn excess payment is liable to return the same and in the present case the same having been adjusted from retiral benefits cannot be said to be arbitrary. However, on specific query of the Court as to whether any wrong doing has been attributed to the petitioner, the answer is in the negative.

6. Having considered the matter, in view of the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vrs. Rafiq Masih & Ors.**, reported as (2015) 4 SCC 334, the recovery from the petitioner cannot be sustained. Admittedly, the petitioner was neither in a position nor there was any misrepresentation on his part due to which he was granted the scale of Rs.785-1210 and, thus, after two years of his superannuation, being a Class III employee, such recovery cannot be made. Accordingly, the authorities are required to refund any amount which has been recovered from the petitioner.



7. Coming to the issue as to what would be the consequences, from the pleadings itself it is apparent that the enhancement of scale of the petitioner from the initial scale on which he was appointed, i.e., Rs.580-860 under office order dated 03.04.1983 to Rs.785-1210 under office order dated 29.08.1987 *prima facie* appears to be erroneous, for the reason that there is no justification or reason mentioned as to how the scale was enhanced. Had it been a fresh recruitment or appointment, there may have been some justification for grant of a particular scale but once there is continuation in service and the pay scale is suddenly increased, there has to be some justification in law, and there being none in the present case, the same cannot be legally sustained. It is a different as to whether it was due to fault and laches on the part of the petitioner or the authorities, but the result is that wrong pay scale was granted to the petitioner. Such wrong is also reflected from the fact that by office order contained in Memo no. 253 dated 31.01.2011, the initial date of appointment of the petitioner has been shown to be 01.03.1983 and then the first ACP is shown to be due from 09.08.1999. This itself indicates the error committed by the authorities as there is no mentioning of the intervening order dated 29.08.1987, which is the most relevant factor in the entire episode, as after 1983, if it is held that the enhanced pay scale was correctly given to the petitioner then obviously he has got his first financial progression on 29.08.1987 and, thus, the same not being reflected in the two ACPs granted to him under the aforesaid office order dated 31.01.2011 is indicative of the fact that the manner of fixing of salary etc. of the petitioner has not been proper, since grant of scale of Rs.785-1210 in 1987 itself is financial progression which has not been taken note of by the authorities. Once having arrived at that conclusion, the Court holds that the authorities shall be entitled to re-fixing the pensionary benefits of the petitioner, notionally treating his salary on the date of his superannuation to be the



one to which he was legally entitled and as has been worked out by them. If the office order dated 31.01.2011 would not have been before the Court, the Court may have directed the petitioner to submit a show cause to justify such grant of scale and would have directed the authorities to consider the same, but once such fact is before the Court, coupled with the fact that no legal or logical link has been shown as to how the initial scale on which the petitioner was appointed with effect from 01.03.1983 of Rs.580-860 was subsequently enhanced to Rs.785-1210 on 29.08.1987, has persuaded the Court to finally settle the issue without unnecessary wastage of time or lingering the matter.

8. In view thereof, the writ petition stands disposed off with a direction to return the amount recovered/adjusted from the post retiral benefits of the petitioner within two months from the date of production of a copy of this order before the respondent no. 3. However, the pensionary benefits of the petitioner shall be fixed and paid upon notional fixation of the last pay drawn by the petitioner in terms of the order impugned, dated 08.06.2017 in the correct pay scale to which he was legally entitled and not on the basis of what was actually drawn by him.

(Ahsanuddin Amanullah, J)

SA/-

AFR/NAFR	AFR
CAV DATE	N/A
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