

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18568 of 2017

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Brij Kishore Tiwary, Son of Late Indrashan Tiwary, resident of village & P.O. Barki Nainijor, P.S. Brahmpur Via Nainijor, District- Buxar. At present resides in By-Pass Road Baba Nagar, Near Sanichara Asthan, P.O. Buxar, P.S. Buxar (Muffasil), District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Inspector General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Bihar, Patna.
4. The Deputy Inspector General of Police, Sahabad Range, Dehri-on-Sone, District- Rohtas.
5. The Superintendent of Police, Buxar.
6. The Accountant, Police Office, Buxar.
7. The Treasury officer, Buxar.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Shree Kant Pandey

For the Respondent/s : Mr. PARTHA SARTHI , GA-4
Mr. Utsav Kumar, A.C. to GA-4

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 22-02-2018

The short facts of the case are that the petitioner herein retired as Class-III employee on 28.02.2017 and thereafter the petitioner was paid his retiral dues, however, suddenly by a letter dated 27.06.2017, contained in Memo No. 185 was issued under the pen and signature of the Superintendent of Police, Buxar directing for recovery of a sum of Rs. 2,21,296/- from the petitioner herein on account of excess payment made to him.

The learned counsel for the petitioner submits that it is a well



settled law that no recovery can be made from a Class-III employee especially after retirement if there has been no misrepresentation on the part of the said employee. It is further contended that the said order dated 27.06.2017 by which recovery has been sought to be made, has been passed without granting any opportunity of hearing to the petitioner and behind his back.

Per contra, the learned counsel for the respondents submits that as per the resolution no. 630 dated 21.01.2010, the actual benefit of the revised pay was to be given with effect from 1st of April, 2007, however, the notional benefit was to be given with effect from 01st of January, 2006 but in case of the petitioner herein, by mistake, the actual payment has been wrongly made with effect from 01.01.2006, hence recovery has been sought to be made from the petitioner herein.

The law on the subject matter is well settled and it has been continuously held in a catena of cases that in case there is no misrepresentation on the part of the employee, recovery from the said employee is impressible in law especially after retirement.

In this regard, it would be useful to refer to the judgment of the Apex Court rendered in the case of State of Punjab and ors. Vs. Rafiq Masih etc., reported in **2015(1) PLJR 261 (State of Punjab vs. Rafiq Masih) (SC)**, paragraph no. 12 whereof is reproduced hereinbelow:-



“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group-‘C’ and Group ‘D’ service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far out-weigh the equitable balance of the employer’s right to recover.”

I find that the case of the petitioner falls within the categories delineated hereinabove by the Hon’ble Apex Court, hence no recovery



can be made from the petitioner herein. Accordingly, the order dated 27.06.2017 contained in Memo No. 185 issued under the pen and signature of the Superintendent of Police, Buxar, is hereby quashed.

It goes without saying that all the consequential benefits would be paid to the petitioner within a period of two weeks from today.

The writ petition is allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

