

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6424 of 2017

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Gauri Shankar Singh, Son of Late Gariba Singh, Resident of Village- Bhikhaband
Biriti Tola, P.O.- Takkipur, P.S.- Daraunda, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna.
2. The Accountant General, Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The Regional Dy. Director, Saran at Chapra.
5. The District Magistrate Siwan, District- Siwan.
6. The District Education Officer, Siwan, District- Siwan.
7. The District Programme Officer, Siwan, District- Siwan.
8. The Treasury Officer, District- Siwan.
9. The Drawing Disbursing Officer, Maharajganj, District- Siwan.
10. The Head Master, Government Middle School, Maharajganj, District- Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amit Shrivastava and Mr. Sanjeev Nikesh, Advocates
For the State	:	Mr. Sunil Kumar, A.C. to G.A. 12
For the Accountant General	:	Mr. Ram Yash Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 09-02-2018

Heard Mr. Amit Shrivastava along with Mr. Sanjeev
Nikesh, learned counsel for the petitioner; learned counsel for the
Accountant General and learned A.C. to G.A. 12 for the State.

2. The petitioner has moved the Court for the following



reliefs:

“I. For issuance of an appropriate writ in the nature of MANDAMUS for commanding and directing the Respondent Authorities to fix the pension of the Petitioner who retired as Assistant Physical Trained Teacher from Government Middle School, Maharajganj, Siwan on 31.10.2015.

II. For issuance of an appropriate writ in the nature of MANDAMUS commanding and directing the Respondent Authorities to pay arrears of pension, Gratuity, leave encashment and other legitimate dues amount with 18% interest per annum.

III. For issuance of an appropriate writ in the nature of Prohibition restraining the Respondent Authorities to make any recovery for excess payment to the Petitioner during his service.

IV. For any other relief/reliefs to which the petitioner deemed entitled into the facts and circumstances of the case.”

3. At the very outset, learned counsel for the petitioner submitted that he would be restricting his prayer to interference by the Court to the order of recovery intended to be made from his pensionary benefits on account of wrong grant of increments to him while in service. He further prays that as he has superannuated on 31.10.2015, and payments are not being made, interest be also granted. The petitioner was appointed as Physical Trained Teacher on 19.10.1985 and thereafter ultimately superannuated from service on 31.10.2015. In the meantime, along with others, he was granted the benefit of 1st and 2nd A.C.P. with effect from 09.08.1999 and 01.01.2009 respectively. The controversy seems to have arisen with



regard to the validity of grant of such A.C.P. and the matter came before the Court when petitioner and similarly situated persons moved the Court. The matter was remanded to the Director, Primary Education for consideration and ultimately the same has resulted in him holding that grant of 1st and 2nd A.C.P. was not proper and accordingly, direction has been given for re-fixing the pay in accordance with law and based on the same to grant him pensionary benefits. However, the authorities on the one hand are not paying pension, gratuity etc. and on the other hand are contemplating recovery of the amount which, according to them, has been drawn in excess on account of wrong grant of 1st and 2nd A.C.P. in terms of the letter of the District Programme Officer, Establishment (Education), Siwan to the Block Education Officer, Maharajganj contained in Letter No. 2175 dated 06.10.2017. It appears that pursuant to the same, the process has also started in computing the alleged excess amount drawn by the petitioner which has been quantified as Rs. 7,40,697/-.

4. Learned counsel for the petitioner submitted that without going into the merits of the order by which the petitioner has been held unsuited for grant of 1st and 2nd A.C.P., which is not the subject of the present petition, as the same has been granted by the authorities after considering the case of the petitioner and other



similarly situated persons, there being no fault, laches or misrepresentation on his part, the monetary benefit already derived during his service period, after more than two years of his superannuation, cannot be recovered as it would be iniquitous. It was submitted, that for the purposes of the present case, where pensionsary benefits including pension and gratuity is claimed, the petitioner would restrict his claim to payment even as per the order of the Director by correctly re-fixing his pay treating it to be the last pay drawn but without the authorities going into the exercise of computing the excess drawn and the obvious recovery which is reflected from the correspondence of the authorities where almost seven and a half lakhs rupees has been quantified as being overdrawn by the petitioner.

5. Learned counsel for the State submitted that the order passed by the Director is pursuant to the order of the Court. However, he was not able to justify or show to the Court as to when the Director himself has not directed for any recovery, how the authorities are embarking on such exercise in an overzealous manner and further, why, till date, at least the admitted retiral dues of the petitioner are still held up, including pension and gratuity.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, since the



order of the Director dated 22.07.2016 contained in Memo No. 833 is not the subject matter of the present writ application, without interfering in the same, it is held that the authorities cannot make recovery of any amount which they may consider to have been drawn in excess to the entitlement of the petitioner, both in view of the law settled by the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported as **(2015) 4 SCC 334**, as well as the order dated 22.07.2016 itself. As far as payment of pensionary benefits are to be computed, the same, in terms of the order dated 22.07.2016 itself may be done on the basis of notional re-fixation of the last pay drawn by the petitioner in the correct scale to which he was entitled to in law. However, the same be done without any delay and actual payment relating to pension, gratuity and leave encashment be made to the petitioner expeditiously and latest within three months from the date of production of a copy of this order before the respondent no. 7. The writ petition stands allowed in the aforementioned terms.

7. It goes without saying that if recovery has been made of any amount, the same shall be refunded within the aforesaid period.

8. In view of the fact that even the gratuity of the petitioner has been withheld by the authorities, the Court deems it



appropriate to award 5% simple interest on the amount due till the date of actual payment. The same shall also be paid within the aforesaid period.

(Ahsanuddin Amanullah, J.)

P. Kumar

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