

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9980 of 2017

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Vimal Chandra Mishra Son of late Abhay Mishra, resident of Village-Malikpur (Prasadi Tola), PO-Chakauti, PS-Jale, District-Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar, through the Director General of Police, Bihar Patna
2. The Deputy Director General of Police Darbhanga Division, Darbhanga.
3. The Senior Superintendent of Police, Darbhanga.
4. The Accountant General (A&E), Bir Chand Path, Bihar, Patna.
5. The Assistant Accountant General Cum Senior Account Officer, Bir Chand Path, Bihar, Patna.
6. The Treasury Officer, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sheel Bhadra Jha, Advocate
For the State	:	Mr. Utsav Kumar, AC to GA 4
For the A.G. Bihar	:	Mr. S. M. Ehtisham, S.C.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 08-05-2018

Heard learned counsel for the petitioner and State.

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

“a. For issuance a writ in the nature of Certiorari for quashing the letter vide memo no. 3488 dated 11.11.2016 as well as its consequential letter vide memo no. 737 dated 25.02.2017 issued by the Senior Superintendent of Police, Darbhanga (respondent no. 3) by which he has pleased to direct the Treasury Officer, Darbhanga to recover Rs. 9,18,338/- from the provisional sanctioned gratuity amount of Rs.3,77,105-3,77,000=105/-



and amount of unutilized leave of Rs.2,57,850-2,57,800=50/- total balance amount of Rs. 105+50=155/- deposited in the account of the petitioner as well as rest dues amount has been also deducted Rs. 69,618/- from amount of provisional pension from August, 2016 to January, 2017 and also direct to deduct rest amount of Rs.2,83,538/- from the monthly pension of the petitioner, which will be executed by yourself.

b. For issuance a writ in the nature of Mandamus or any other writ or writs, order or orders, direction or directions commanding the respondent particularly the Respondent no. 3 to fix pension after giving benefit of 3rd A.C.P. to the petitioner.

c. And for any other relief or reliefs this Hon'ble Court deem fit and proper may be given to the petitioner."

3. In essence, the petitioner is aggrieved by the recovery directed to be made from his post retrieval benefits on account of him having wrongly been paid the higher salary to which he was not entitled, according to the authorities, for not having cleared the departmental Hindi Noting and Drafting Examination.

4. Learned counsel for the petitioner submitted that despite the fact that he was not required to pass the said examination as his job did not require making any Hindi Noting and Drafting, but



still he had filled up the form for appearing at the said examination and upon reaching the centre, he was informed that his form had not been forwarded and, thus, he could not appear in the examination and with regard to the same he had made an application to the Divisional Commissioner, Saran at Chapra on 07.12.2014 with a request to exempt him from such examination. It was submitted that the Rules permit such exemption for persons who have crossed the age of 50 years and the petitioner also having crossed the age, was eligible for such exemption. Learned counsel submitted that even the grant and payment of a particular scale was done by the authorities without there being any role of the petitioner muchless any misrepresentation on his part.

5. Learned counsel for the State submitted that such scale which was given to the petitioner and payment made to him was wrongly done and, thus, the authorities have now rightly fixed the scale of the petitioner and whatever was drawn in excess of his entitlement has been ordered to be recovered. On a direct query of the Court as to whether there was any contributory fault/negligence/laches or misrepresentation on the part of the petitioner or he was involved in preparing his own salary slip, learned counsel for the State admitted that there was no such act on the part of the petitioner.



6. Having considered the matter, the Court finds that the recovery made from the post retiral dues of the petitioner cannot be sustained. The petitioner having made an attempt to appear at the examination about which there is no denial in the counter affidavit and further having asked for exemption also not being denied, at least he had made an attempt to ask for exemption. That is one aspect of the matter. The other more important aspect is the fact that at no point of time was he ever involved in him getting a higher scale despite not being entitled and learned counsel for the State not being able to point out any contributory laches or misrepresentation on the part of the petitioner, he cannot, after having been granted the benefit, be directed to refund the same or recovery made from his post retiral benefits, especially after his superannuation. The view of the Court is fortified by the decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported as **(2015) 4 SCC 334**.

7. Accordingly, the writ petition stands allowed. The authorities are directed to release the amount which has been recovered from the terminal dues of the petitioner. All admitted dues in terms thereof, be paid to him within two months from the date of production of a copy of this order before the respondent no. 3. However, the Court would clarify that since, in law, the petitioner may not have been entitled to the enhanced scale, his salary would be



notionally fixed on the date of retirement in the scale to which he was legally entitled, in accordance with law, and accordingly, the post retiral benefits shall be calculated, including pension, on the basis of the deemed correct scale on the date of retirement.

(Ahsanuddin Amanullah, J)

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