

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8530 of 2017

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Bhagwan Singh, son of Late Sri Ram Binod Singh, Resident of Village+ P.O.-
Kumna, P.S.- Koppa, District- Saran at Chapra.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. The Director General of Police, Bihar, Old Secretariat, Patna.
3. The Additional D.G. of Police, Military Police, Bihar, Patna.
4. The D.I.G. of Police, Military Police, Northern Zone, Muzaffarpur.
5. The Commandant, B.M.P.- 13, Darbhanga.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ram Hriday Prasad, Advocate Maruti Kumari, Advocate
For the Respondent/s	:	Mr. Dhurendra Kumar, A.C. top GP-5

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 24-08-2018

Heard learned counsel for the petitioner and
learned counsel for the State.

2. In this case, the petitioner was appointed as Constable in B.M.P-6, Muzaffarpur, and superannuated from the Post of Sub-Inspector of Police (Arms) from B.M.P.-13, Darbhanga on 31.01.2017. However, just before the retirement, he was served a letter dated 11.01.2017, whereby direction has been given to deposit an amount of Rs.8,61,838/- on the ground of excess payment has made to the petitioner with respect to



illegal grant of A.C.P.

3. Learned counsel for the petitioner submits that all the payment of A.C.P. has been made not on the basis of any fraud or misrepresentation made by the petitioner, but it is the department, of his own, has given the benefit of A.C.P. and made payment to the petitioner, so the recovery after the retirement of the petitioner is *per se* illegal.

4. In support of his submission, learned counsel for the petitioner has place reliance on the decision rendered in the case of *State of Punjab and Ors. Vs. Rafiq Masih (white washer)* reported in *2015(1) PLJR (S.C.) 261*, wherein the Hon'ble Supreme Court has culled out the proposition in paragraph no.12, in which the case of all categories of employees have been discussed and decided with respect to recovery of excess payment made to the employees. It would be profitable to quote paragraph no.12 of the said judgement, which is as follows:-

“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 herein above, 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 outweigh the equitable balance of the employer's right to recover.”

5. On perusal of the aforesaid order, it appears that the



present case is squarely covered by the judgement, as aforesaid.
Hence, the impugned orders dated 11.01.2017 and 09.06.2017
are set aside. The authority is directed to release the pension and
gratuity amount in favour of the petitioner forthwith without
unnecessary delay.

6. With the aforesaid observations and directions, this
writ petition is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	25.08.2018
Transmission Date	N/A.

