**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No. 9726 of 2016**

======================================================

Dr. Anand Kumar Choudhary, Son of Late Chandra Narayan Chowdhri, Resident of Village & P.O.- Panchobh Via Laheriasarai, P.S. Bishanpur, District Darbhanga.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Vikash Bhawan, Patna.
2. Special Secretary, Education Department, Vikash Bhawan, Patna.
3. Additional Secretary, Education Department, Vikash Bhawan, Patna.
4. Jagjiwan Ram Institute of Parliamentary Studies and Political Research, Patna through its Director.
5. The Director, Jagjiwan Ram Institute of Parliamentary Studies and Political Research, 10 Mangles Road, Patna.
6. Drawing and Disbursing Officer, Jagjiwan Ram Institute of Parliamentary Studies and Political Research, 10 Mangles Road, Patna.
7. The Accountant General Bihar, Patna.

.... .... Respondent/s

======================================================

**Appearance :**

| | | |
|---|---|---|
| For the Petitioner/s | : | Mr. Surendra Mishra, Advocate |
| For the State | : | Mr. Ravi Verma, A.C. to G.P. 4 |
| For the Respondents No. 4 to 6 | : | Mr. Upendra Pratap Singh, Advocate |

======================================================

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

**Date: 18-06-2018**

Heard learned counsel for the petitioner; State and respondents no. 4 to 6.

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

> *"(i) For quashing and setting aside the letter no. 1121 dated 16.06.2015 whereby pension papers of the petitioner has been returned and order for recovery of bunching increment already paid to the petitioner has been passed.*
>
> *(ii) For quashing the memo no. 235 dated 25.07.2015 where by in the light of the aforesaid letter no. 1121 dated 16.06.2015 pay fixation a fresh has been made.*
>
> *(iii) For quashing of the memo no. 274*

*dated 28.08.2015 issued by the Jagjiwan Ram Institute of Parliamentary Studies and Political Research, Patna under the signature of the Director of the Institute where by the petitioner has been forced to deposit Rs. 99,577/- in the Treasury.*

*(iv) For direction to the respondents authorities to pay the remaining post retirement benefits such as full pension and gratuity on the basis of the last pay drawn.*

*(v) For further direction the respondents authorities to pay all the above mentioned post retirement benefits along with interest @18% per annum and cost of litigation.*

*(vi) For direction to the respondents to grant any such other relief or reliefs which the petitioner is found legally entitled in the facts and circumstances of the case."*

3. The petitioner was appointed as a Research Investigator in the year 1984 and was promoted on the post of Research Fellow after the take over of the Institute by the State Government and continued on the post and finally superannuated as a Research Fellow on 31.01.2011. While considering his entitlement to retiral benefits, it was detected that due to wrong benefit of bunching given to him, a higher scale was drawn by the petitioner and, thus, decision has been taken to deduct Rs. 92,152/- from his post retiral dues before making payment of the remaining dues.

4. Learned counsel for the petitioner submitted that he has got the pay in the scale as fixed by the respondents in which he had no role and, thus, he should not be made to suffer by way of recovery. However, on a categorical query of the Court as to whether

he was entitled for such benefit, learned counsel for the petitioner was not able to justify in law his entitlement to such bunching and benefit derived thereof.

5. Learned counsel for the State submitted that since wrong payment has been made in a higher scale to the petitioner due to benefit of bunching being given to him, even though he was not entitled to, the authorities are justified in making recovery.

6. Having considered the matter, though the Court upholds the contention of the respondents that the petitioner has been wrongly granted the benefit of bunching due to which he received higher pay to which he was not entitled in law, he is entitled to payment of his retiral dues based on the calculation made notionally in the correct scale to which he was entitled to and not which he may have actually drawn on the date of his superannuation in the higher scale, which the Court has also found to be inadmissible and which learned counsel for the petitioner was also not able to justify. However, coming to the issue of recovery, as the same has been granted to the petitioner and paid to him, after such a long period after his superannuation, such amount sought to be recovered is inequitable. Accordingly, the Court feels persuaded to interfere in the matter.

7. In view thereof, the writ petition stands disposed off

holding that the recovery sought to be made from the post retiral dues of the petitioner cannot be permitted and accordingly, such decision/order stands set aside. However, the payment of pension and other retiral dues of the petitioner shall be calculated after notionally fixing his last pay, on the basis of his actual entitlement in law, in the scale the petitioner is entitled to. The exercise be completed within two months from the date of production of a copy of this order before respondent no. 3.

**(Ahsanuddin Amanullah, J.)**

P. Kumar

| | |
|---|---|
| AFR/NAFR | |
| U | |