

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 19045 of 2008

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Imamun Nesha, Wife of Late Md. Farooque, Son of Late Md. Yasan, Resident of
Village- Nayabasti Naryanpur, P.S. Ramnagar, District- West Champaran (Bihar).
.... Petitioner/s

Versus

1. The State of Bihar through its Secretary, Higher Education, Government of Bihar, Patna.
2. The Director, Higher Education, Government of Bihar, Patna.
3. The District Education Officer, West Champaran, Bihar.
4. The Head Master, High School Jarmuhi, West Champaran, Bihar.
5. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Singh,
Mr. Anjani Kumar and
Mr. Sitaram Prasad, Advocates
For the State : Mr. Kumar Alok, S.C. 7

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 08-03-2018

Heard learned counsel for the petitioner and the State.

2. The original writ petitioner, who retired from the post of Assistant Teacher under the State Government on 30.11.2004 has moved the Court for the following reliefs:

“That this is an application on behalf of abovenamed petitioner for issuance of appropriate writ (s)/ order (s)/ direction (s) to pay Rs. 1,43,105 with statutory interest which has been deducted from Gratuity of petitioner on the ground that he has received the scale of trained teacher even though he was untrained.

And further for any other direction (s) as per true facts and circumstances of the case.”

3. Having died during the pendency of the proceeding, he has been substituted by his wife.



4. The petitioner was appointed as an untrained graduate teacher and was getting the relevant scale to which he was entitled. Thereafter, in terms of pay revision with effect from 01.01.1996, he was granted the scale of Rs. 5000-8000/-. He continued to draw the scale till his superannuation but while granting him pensionary benefits, the authorities took the stand that he has wrongly been granted the scale of Rs. 5000-8000/- though the same ought to have been Rs. 4000-6000/-.

5. Learned counsel for the petitioner submitted that in the reply submitted by the Principal of the college concerned to the District Education Officer, West Champaran (Bettiah) dated 15.12.2004, it has been explained that the petitioner had not been granted anything more than what he was entitled to as it was only a replacement scale for the scale of Rs. 1400-2600/-, which the original writ petitioner was getting at the relevant point of time. It was submitted that after retirement, the authorities have taken a stand and have also made recovery from the pensionary benefits of the original writ petitioner which is impermissible in law as he had no role in such fixation of his pay and also there was no misrepresentation on his part and the authorities themselves had granted him that scale which is expected to be in accordance with the lawful entitlement of the original writ petitioner.



6. Learned counsel for the State submitted that even by the admitted position, the fixation had to be in terms of the Resolution No. 660 dated 08.02.1999 of the Finance Department of the State Government which clearly lays down the condition that the recommendation for revision of the pay was post wise which also had a condition regarding the qualification of the person so affected by the pay revision. It was submitted that in Annexure-3 of the said resolution, it was specifically stated that with regard to the revision of Untrained Graduate Teachers appointed by the State Government, the revised pay scale would be Rs. 4000-6000/- whereas, only in the case of Trained Graduate Teachers, in consonance with the recommendation of the Central Pay Revision Commission, the State Government had agreed to the scale of Rs. 5000-8000/-. However, he was not in a position to controvert that there was no misrepresentation or role of the original writ petitioner in having drawn the pay scale of Rs. 5000-8000/-. Further, learned counsel has also not been able to defend as to how the recovery could be made for an amount already drawn which was not due to any fault, laches or misrepresentation on the part of the concerned employee.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the recovery from the terminal dues of the original writ



petitioner is impermissible in law. He having got the benefit of a higher pay scale not on his own volition and without there being any misrepresentation on his part; after retirement, any excess paid cannot be recovered from him. However, as far as the entitlement of the original writ petitioner is concerned, from the materials on record, the Court finds that the State has been able to demonstrate that the original writ petitioner being an Untrained Graduate Teacher, the pay revision with effect from 01.01.1996, entitled him to a scale of Rs. 4000-6000/- and not Rs. 5000-8000/-. Thus, as far as post retiral entitlements are concerned, including family pension, the same will now have to be recalculated on the basis of notionally fixing the pay scale of the original writ petitioner with effect from 01.01.1996 in the scale of Rs. 4000-6000/- and accordingly, payments shall be made.

8. Accordingly, the writ petition stands disposed off holding that the recovery made from the post retiral benefits of the original writ petitioner being impermissible, be returned to his wife within six weeks from the date of production of a copy of this order before the respondent no. 3. As the Court has held that the recovery already done was unjustified and the same having been made in the year 2005 and almost 13 years having elapsed and also taking into consideration the fact that the original writ petitioner has died and



the widow is now before the Court, the Court deems it appropriate to award 6% simple interest on the amount which has been recovered and is now to be paid to the petitioner within the same period.

9. With regard to other benefits and family pension, the same are to be paid to the writ petitioner, if already not done, after notionally fixing the pay scale of the original writ petitioner with effect from 01.01.1996 in the grade of Rs. 4000-6000/-.

(Ahsanuddin Amanullah, J.)

P. Kumar

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