

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16980 of 2008

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Bindeshwari Prasad Singh, Son of Late Ram Swaroop Singh, Resident of Village and P.O.- Bahpura, P.S. Bihta, District – Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary-Cum-Commissioner, Human Resources Development Department, Government of Bihar, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. District Superintendent of Education, Patna Collectorate Compound, Patna.
4. District Accounts Officer, Patna, District-Patna.
5. Head Master cum Drawing Disbursing Officer, Government Middle School, Sherbhukka, Maner, District- Patna.
6. Accountant General, Bihar, Patna.
7. Treasury Officer, Sub-Treasury, Danapur, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. V.R.P. Singh, Advocate
Mr. Arvind Kumar, Advocate

For the Respondent/s : Mr. Ajay Behari Sinha, GA-8

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 11-07-2018

Heard learned counsel for the petitioner and State.

2. The petitioner is aggrieved by the order as contained in Annexure-5/1 and consequential order of recovery as contained in Annexure-7.

3. Learned counsel for the petitioner submits that the pay scale of the petitioner was fixed in the year 1989. There was no fraud or misrepresentation by the petitioner in the matter of fixation of pay scale. The petitioner received pay as per the revised pay scale from 1989 to 16.06.2006. The respondents thereafter decided to



downgrade the pay scale on the ground that the pay scale was wrongly fixed. Learned counsel submitted that the petitioner was superannuated on 30.04.2008 and thereafter the respondents have recovered the alleged excess amount paid to the petitioner on account of error committed by the respondents in fixation of pay scale. Learned counsel submits that in the instant case there is no allegation that the petitioner has made any false statement or misrepresentation or in any manner practiced fraud or misrepresentation. Referring to the judgment of the Apex Court, he submits that the action of the respondents in recovering the alleged excess amount of the petitioner after superannuation is unsustainable. In view of the judgment of the Apex Court in the case of **State Of Punjab & Ors vs. Rafiq Masih**, reported in **(2015) 4 SCC 334**, the respondents are required to restore the amount recovered from the petitioner, as recovery from the petitioner on account of mistake committed by the respondents in fixation of pay scale is not sustainable. However, while quashing Annexure-7, the Court does not approve the pay scale, which was erroneously fixed and paid after Annexure-5.

4. The respondents have to work out the entitlement of the petitioner for payment of post-retiral dues on the basis of the entitlement of the petitioner as the benefit of wrong pay fixation is not



available to the petitioner for fixation of post-retiral benefit.

5. The writ application is allowed to the extent indicated above.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.07.2018
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