

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1281 of 2017

In
Civil Writ Jurisdiction Case No.21839 of 2014

=====

Shaligram Singh, Son of Late Sheojee Singh, Resident of At + Post Office-
Deopura, Police Station-Rasoolpur, District-Siwan.

... .. Appellant/s

Versus

1. The Accountant General, Bihar, Birchand Patel Path, Patna.
2. The State of Bihar, through Principal Secretary, Human Resource Department, Government of Bihar, Patna.
3. The Under Secretary, Human Resource Department, Government of Bihar, Patna.
4. The Director, Sexondary Education, Budh Marg. Patna.
5. The Treasury Officer, Siwan.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Shailendra Kumar Singh Advocate
For the Respondent/s	:	Mr. Ashutosh Ranjan Pandey AAG15
For the Accountant General :		Mr. Satyendra Kumar Jha Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

6 10-10-2018 Admit.

Shri Ashutosh Ranjan Pandey, learned counsel,
waives notice of admission on behalf of Respondent Nos.
2, 3, 4 and 5 and Shri Styendra Kumar Jha, learned
counsel, waives notice on behalf of Respondent No. 1.

In the facts and circumstances, the present
appeal is taken up for final hearing today.

Feeling aggrieved and dissatisfied by the



impugned order passed by the Learned Single Judge dated 10.08.2017 in C.W.J.C. No. 21839 of 2014, by which the learned Single Judge has refused to interfere in the matter of re-fixation of pension of the original writ petitioner, the original writ petitioner has preferred the present Letters Patent Appeal.

The facts leading to the present Letters Patent Appeal in nutshell is as under:

That the appellant-original writ petitioner is a retired Teacher. After his retirement and after even authorization of the pension etc., it was discovered that the appellant had not passed Hindi Noting and Drafting Examination any time during his service career and, therefore, was not entitled to the increments and in fact he never earned any increments. However, due to may be omission and oversight the increment component got included in his pay bill and he derived the benefit thereof till his superannuation.

When the Accountant General discovered the same fact, the appellant-original writ petitioner was given an opportunity to explain. The appellant-original writ petitioner represent that since the increments were granted by the competent authority, the same should not be ordered to be deducted or pension revised.

That thereafter an order came to be passed by



the appropriate authority, including the Accountant General, for withholding or recover a sum of Rs. 3,10,813/-, which was being paid wrongly, considering the increments, which otherwise, he was not entitled to and the Accountant General issued a revised PPO, re-fixing his pension, excluding the increments.

The aforesaid was the subject matter before the learned Single Judge. The learned Single Judge has observed that as the appellant-original writ petitioner has never passed the Hindi Noting and Drafting Examination during his service career, he was not entitled to the benefit of increments and, therefore, he cannot continue to derive the benefit of increments by including it into the component of the pension, dismissed the petition by the impugned judgement and order.

Feeling aggrieved with the impugned order and judgement of the learned Single Judge, the original writ petitioner has preferred the present Letters Patent Appeal.

Learned counsel appearing on behalf of the appellant has made two-folds submission. One with regard to the re-fixation of pension and issuance of the revised PPO; and another is with respect to the recovery of the amount paid in excess.

Learned counsel for the appellant-original writ



petitioner has further submitted that as the increments were granted by the competent authority, the same should not be ordered to be deducted or pension revised.

It is submitted that even the re-fixation of the pension, excluding the increments, is also, therefore, bad in law.

It is further submitted that in any case, recovery of Rs. 3,10,813/- is not justifiable in view of the decision of the Hon'ble Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer), reported in 2015 (1) PLJR (SC) [261]***.

Learned counsel appearing on behalf of the appellant has heavily relied upon the decision rendered by the learned Single Judge of this Court in the case of ***Praduman Prasad Singh Vrs. The State of Bihar, reported in 2014 (4) PLJR 117*** in support of the above submission that as the increments were granted and released by the competent authority, therefore, the same cannot be withdrawn and/or the pension is not required to be revised excluding the increments.

Learned counsel appearing on behalf of the respondents-State has supported the impugned judgement and order.

Having heard the learned counsel for the respective parties and considering the facts, narrated hereinabove, the submission on behalf of the appellant –



original writ petitioner that the pension should not have been revised excluding the increments cannot be accepted. Once it is found that having not passed the departmental examination, the original writ petitioner was not entitled to increments and in fact there was a mistake on the part of the authority in releasing/granting the increments, the same is rightly withdrawn and the pension is rightly refixed, excluding the increments.

So far as the reliance placed upon the decision of the learned Single Judge in the case of Praduman Prasad Singh (Supra), relied upon by the learned counsel appearing on behalf of the appellant, is concerned, we are not in the agreement with the view taken by the learned Single Judge. Once it is held and found that the increments were wrongly released/granted, in that case, the same can be withdrawn and the pension is required to be refixed, excluding the increments, which was wrongly granted/released. Otherwise, it will perpetuate the illegality.

Under the circumstances, the order passed by the learned Single Judge confirming the refixation of pension excluding the increments is confirmed.

However, the learned counsel appearing on behalf of the appellant-original writ petitioner is justified in submitting that the amount of pension paid to the



original writ petitioner from the date of his superannuation till the order of re-fixation should not have been ordered to be recovered and/or should not have been recovered, in view of the decision of the Hon'ble Supreme Court in the case of State of Punjab and others Vs. Rafiq Masih (Supra).

The submission on behalf of the State that the amount is not recovered, but it is adjusted from the other payments and, therefore, the decision of the Hon'ble Supreme Court in the case of Rafiq Masih (Supra) is not applicable, cannot be accepted. The adjustment from other payments can also be said to be a mode of recovery.

In the circumstances, the order to recover/adjust the amount from the other retirement benefits cannot sustain.

In view of the aforesaid reasons, the present appeal is partly allowed.

The order of re-fixation of the pension, excluding the increments, is hereby confirmed.

However, the respondents are directed to refund the amount already recovered/adjusted from the other retirement benefits of the petitioner, i.e., the difference between the actual amount of pension already paid prior to the order, dated 4th April, 2014 and the



amount payable on refixation, i.e., 04.04.2014.

The present appeal is partly allowed to the
aforesaid extent.

There shall be no order as to costs.

In view of the disposal of the appeal, the
Interlocutory Application stands disposed off,
accordingly.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

skm/-

U			
---	--	--	--

