

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10833 of 2009

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Pramila Kunwar, wife of Late Prabhakar Premi Pathak, R/O-Bikrampur, P.S.-Tier,
District- Bhojpur.

.... Petitioner

Versus

1. The State of Bihar
2. Home Commissioner, Government of Bihar, Old Secretariat, Patna.
3. Director General of Police, Government of Bihar, Patna.
4. I.G. Bhagalpur Range, Bhagalpur, District- Bhagalpur.
5. Superintendent of Police, Bhagalpur, District- Bhagalpur.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Surendra Kr. Singh, Advocate Smt. Sudha Chandra, Advocate Smt. Tulika Singh, Advocate
For the State	:	Mr. Bijoy Kumar Sinha, A.C. to A.A.G.-5

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 23-01-2018

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

2. In this case, the petitioner is challenging the order dated 11.11.2008, passed by the Superintendent of Police, Bhagalpur, whereby and where-under direction has been given to recover the excess amount of Rs.2,61,846/- from the pension and gratuity of the original petitioner and accordingly, the same has been recovered.

3. The original petitioner was working as constable in the Bihar Police Service, on account of his illness, time to time he used to visit Patna and remained absent from duty. A departmental proceeding was initiated for his absence, he was put under



suspension but final order of dismissal was not passed but before that, on the ground of illness he filed an application for voluntary retirement. The then Superintendent of Police, Bhagalpur, considered the predicament of the original petitioner and regularized all absence of the original petitioner against leave or extra ordinary leave and also granted the voluntary retirement. A new incumbent came and when the matter was placed before him, it was found that the original petitioner has been granted more leave what was standing to his leave account and arrived to a conclusion that an amount of Rs.2,61,846/- requires to be recovered from the original petitioner and accordingly, it has been recovered.

4. In the present case, only the challenge is for the recovery of the amount. It is not in dispute that the original petitioner filed application for voluntary retirement as well as his long absence be adjusted against extra ordinary leave and normal leave, which was responded by the then Superintendent of Police, Bhagalpur, what he had done, he has exercised his discretionary power, the absence of the petitioner was adjusted against leave or extra ordinary leave. It is also an admitted fact that after separation from service, the original petitioner died, who has been substituted by his wife, neither during the life time of the original petitioner nor to the present petitioner any notice was given for realization of the



said amount of Rs.2,61,846/-. It is also a well known principle of law that when there is no mistake or any fraud or misrepresentation has been committed by the employee, it will not be prudent to recover the excess amount from retiral dues from Class-III and IV employees. Reliance can be place on the decision of the Hon'ble Supreme Court in the case of *State of Punjab and Ors. vs. Rafiq Masih (white washer) and Ors.* reported in (2015) 4 SCC 334 inasmuch as before passing the recovery order, no notice or show-cause was issued to the petitioner, which makes the order illegal.

5. In such view of the matter, the order dated 11.11.2008, passed by the Superintendent of Police, Bhagalpur, is quashed. Direction is given to the respondents to return the recovered amount to the petitioner within a period of 10 (ten) weeks from the date of receipt/production of a copy of this order. In failure to make payment within the aforesaid period, the payment will carry the compound interest at the rate of 9% per annum.

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	21.02.2018
Transmission Date	N/A.

