

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 16790 of 2016

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Bishun Deo Rajak, Head Constable No. 802090030 Central Industrial Security Force (C.I.S.F.) Son of Late Muni Rajak Resident of Village+ P.O.-Narayanpur, P.S.+ District- Bhagalpur.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Home Affairs Department, Government of India, New Delhi.
2. The Inspector General/ WS, C.I.S.F. Ministry of Home Affairs, R.C.F.L. Complex, Chembur, Mumbai-400074.
3. The Commandant, C.I.S.F. Ministry of Home Affairs, S.S.T.P.S. Shakti Nagar, P.O.- Shakti Nagar, District-Sonbadra, Uttar Pradesh.
4. The Deputy Commandant, C.I.S.F. Ministry of Home Affairs, S.S.T.P.S. Shakti Nagar, P.O.-Shakti Nagar, District-Sonbadra, Uttar Pradesh.
5. The Pay and Account Officer, Central Pension Account Office, Trikoot-2, Bhika Ji Kama Palace, New Delhi- 110066.
6. The Deputy Inspector General, C.I.S.F. EZ, Head Quarter, Patna (Bihar).

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar No. 1, Advocate
For the Union of India	:	Mr. S. D. Sanjay, A.S.G.
		Mr. Ram Anurag Singh, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 12-09-2018

Heard learned counsel for the petitioner and Mr. S.D.

Sanjay, learned Additional Solicitor General along with Ram Anurag

Singh, learned counsel for the Union of India.

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

“That by the present writ petition, the poor and helpless Senior Citizen Petitioner craves indulgence before this Hon’ble Court for issuance of a writ in the nature of mandamus, strictly directing the Respondents to make payment of entire amount of Retiral dues including (i) Amount of G.P.F. (ii) Earned leave (iii) Assured money (iv) Gratuity (v)



Full Pension and (v) All arrears along with appropriate interest, cost and compensation, within a short fixed period. As the petitioner (B.D.Rajak) retired on 20.01.2012 lastly working on the post of Head Constable No. 802090030/G.D. C.I.S.F. Unit S.S.T.P.S Shakti Nagar, Dist.- Sonbhadra of Uttar Pradesh and he is now permanent resident of village+ P.O.- Narainpur, P.S.+ District- Bhagalpur and suffering from several old age diseases. And or to grant other direction or directions, other relief or reliefs as it may be deemed fit and proper to the facts and circumstances of this case.”

3. From the pleadings on record, it transpires that the prayer made with regard to the deduction in the amount of pension is erroneous for the reason that due to the commutation of pension, certain amount is reduced from the full pension which is otherwise payable to the employee. Thus, to such extent, the Court finds that the reduced amount of pension as compared to the full pension is in accordance with law.

4. Coming to the deduction of Rs. 40,374/-, from the gratuity of the petitioner, certain explanation has been provided in the supplementary counter affidavit filed by the respondents indicating that due to amendment in the annual increment and pay fixation and also excess payment of 16 days ECL for the year 2011, such dues were remaining to be adjusted/payable by the petitioner and, thus, the same have been adjusted.

5. The petitioner retiring from the post of Head Constable



being in no way connected with the preparation of his bill or payment of his salary and other emoluments, cannot be fastened with the responsibility of any error committed in doing so, that too, in the particular facts and circumstances of the present case which is a meager amount of Rs. 40,374/-. Thus, the Court is inclined to interfere in the same. The view of the Court is fortified by the decision of the Hon'ble Supreme in the case of **State of Punjab v. Rafiq Masih** reported as (2015)4 SCC 334, where such recovery has been held to be impermissible in law. The relevant at paragraph no. 18 reads as under:

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives



at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

6. Accordingly, the writ petition stands disposed off holding that the amount of Rs. 40,374/- deducted from the gratuity of the petitioner be returned latest within three weeks from the date of production of a copy of this order before the respondent no. 3.

(Ahsanuddin Amanullah, J.)

P. Kumar

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