IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15669 of 2018

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Ram Chandra Lal Das S/o Late Ram Govind Lal, Resident of Ram Chandra Bhawan, Golbigha More Gaya, P.S.- Rampur, Distt.- Gaya Bihar.

... ... Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department of Home Prision Govt. of Bihar, Patna.
3. The Inspector General Prison Bihar, Patna.
4. The Accountant General Bihar Birchand Patel Path, Patna.
5. The Treasury Officer, Gaya.
6. The Superintendent, Divisional Jail Madhepura, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjeet Tiwary

For the Respondent/s : Mr.Manish Kumar- Gp4

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 04-11-2019

<u>Re: I.A. no. 01 of 2019</u>

The present interlocutory application has been filed for making correction in the name of the petitioner which has been wrongly mentioned as Ram Chandra Lal Das.

Having regard to the fact that both in the *vakalatnama* as also in the Aadhar Card annexed to the writ petition, the name of the petitioner has been mentioned as *Rajendra Lal Das* as also considering the fact that in paragraph no. 4 of the writ petition, the name of the petitioner is correctly mentioned as *Rajendra Lal Das*, s/o Late Ram Govind Lal, the present interlocutory application stands allowed and the registry is directed to amend the name of the petitioner by deleting the name which has been mentioned as Ram Chandra Lal Das in the cause title and substituting the same by *Rajendra Lal Das.*

Re : C.W.J.C. no. 15669 of 2018

1. The present writ petition has been filed for quashing the Memo no. 454 dated 12.03.2018 issued by the respondent no 6 i.e. the Superintendent, Divisional Jail, Madhepura, Bihar whereby and whereunder the Treasury Officer, Gaya has been directed to make recovery of a sum of Rs. 4,27,976/-, from the petitioner, on account of the following excess payments made to him:-

(i) Rs. 3,68,964 - excess salary paid to the petitioner for the period 01.01.2006to31.10.2016.

(ii) Rs. 23,182 – excess amount of gratuity paid to petitioner.

(iii) Rs. 35,830 – excess amount of leave encashment paid to the petitioner.

2. The learned counsel for the petitioner has submitted that the petitioner has retired upon attaining the age of superannuation on 31.10.2016 while working as Warden at Divisional Jail, Madhepura and was having an unblemished service record. It is further submitted that the petitioner has not

played any fraud so as to obtain excess salary and there has been no misrepresentation on the part of the petitioner leading to payment of excess salary to him, hence the recovery being sought to be made from the petitioner is not permissible in law, thus is fit to be quashed.

3. *Per contra*, the learned counsel appearing for the respondents No. 1 to 3 and 6, by referring to the counter affidavit filed on their behalf, has submitted that the petitioner had joined the government services on 12.02.1985 as a temporary Warden in Central Jail, Gaya, whereafter he was transferred to the District Jail, Aurangabad on 22.08.1995 and thereafter, to the Central Jail, Gaya on 12.10.1999 and further thereafter to District Jail, Nawada on 16.02.2003 and the petitioner was confirmed on the post of Warden vide order no. 87 dated 06.06.2006 issued by the Superintendent, Central Jail, Gaya w.e.f. 03.02.1991 and the salary of the petitioner was fixed from time to time, whereupon he was granted first A.C.P. w.e.f. 09.08.1999 and accordingly, the pay of the petitioner was again revised, however the said fixations were not verified by the District Accounts Officer, Gaya. Subsequently, the petitioner was also transferred to other places and finally, to the District Jail, Madhepura where, the then Superintendent, District Jail,

Madhepura granted benefits of 2nd A.C.P. to the petitioner w.e.f. 01.01.2009 and fixed the pay of the petitioner accordingly on 01.01.2016 in light of the Seventh Pay Scale but did not get the same verified by the District Accounts Officer, Madhepura and finally, the petitioner retired on 31.10.2016 while posted at District Jail, Madhepura. It has been further submitted that at the time of retirement, the petitioner was paid the amount of earned leave, G.P.F., group insurance and provisional gratuity on the basis of the pay scale which he was getting at the time of retirement, however subsequently, the pension papers along with the service book of the petitioner was sent to the Accountant General, Bihar, vide letter dated 31.10.2016, for the purposes of fixation of pension but the pension paper and service book were returned back by the A.G. Bihar, being not satisfied with the entries in the service book, whereafter the same was sent to the District Jail, Madhepura for verification and fixation of pay by the District Accounts Officer, Madhepura and thereupon, it was found by the District Accounts Officer, Madhepura that there was certain anomalies in the fixation of pay scale, hence the same was got rectified and finally, the District Account Officer, Madhepura re-checked the pay fixation made by the Superintendent, District Jail Madhepura and the pay fixation chart was issued.

4. The learned counsel, appearing for the respondents No. 1 to 3 and 6 has further submitted that after fixation of pay by the District Accounts Officer, Madhepura, the revised pension form along with the service book was sent to the office of the A.G. Bihar by the Superintendent, District Jail, Madhepura vide letter dated 29.01.2018 with a request to recover a sum of Rs. 4,27,976/- from the petitioner herein, whereupon the Accountant General, Bihar, Patna fixed the pension of the petitioner vide letter dated 28.08.2018 and also informed the respondent- State authorities regarding payment of excess amount to the petitioner, to the tune of Rs. 23,182/-, under the head of Gratuity. Thereafter, the Superintendent, District Jail Madhepura, upon further verification, found that excess payment of salary has been made to the petitioner w.e.f. 01.02.2000 and not from 01.01.2006, hence the revised calculation chart pertaining to the excess amount of salary paid to the petitioner was prepared for the period 01.02.2000 to 31.10.2016 and it was found that an excess amount, totalling to a sum of Rs. 5,21,552/-, has been paid to the petitioner in the following manner:-

(i) Excess Salary paid to the petitioner-Rs. 4,62,540/-

(ii) Excess Earned Leave paid to the petitioner-Rs. 35,830/-

(iii) Excess Gratuity paid to the petitioner - Rs. 23,182/-
TOTAL - Rs. 5,21,552/-

Accordingly, the Senior Treasury Officer, Gaya was communicated vide letter dated 28.02.2019 to recover the aforesaid sum of Rs. 5,21,552/- from the pension of the petitioner herein.

5. I have heard the learned counsel for the parties and perused the materials on record and I find that according to the well settled principles of law laid down by the Hon'ble Apex Court in a catena of decision reported in ***(2009)3 SCC (Syed Qadir vs. State of Bihar); (1995) Suppl.1 SCC 80 (Sahib Ram vs. State of Haryana); (1994) 2 SCC 52 (Shyam Babu Verma vs. Union of India) ; (1997) 6 SCC 139 (B.Ganga Ram vs. Regional Joint Director) ; (2006) 11 SCC 492 (Purshottam Lal Das vs. State of Bihar) ; (2000) 10 SCC 99 (Bihar State Electricity Board vs. Bijay Bhadur); (2006) 11 SCC 7089 (B.J. Akkara vs. Government of India University) and (1995) suppl. 1 SCC 18 (Sahib Ram vs. State of Haryana) and the one reported in (2015) 4 SCC 334 (State of Punjab vs. Rafique Masih)***, no recovery can be effected from the petitioner, who has already attained the age of superannuation since there has been neither any misrepresentation nor any fraud has been committed by the petitioner herein leading to payment of excess

amount of salary whereas it is the negligence and the latches on the part of the respondent authorities which has led to excess payment of salary. The present case is squarely covered not only by a catena of judgments rendered by the Hon'ble Apex Court, referred to herein above, but also by the latest judgment rendered by the Hon'ble Apex Court in the case of ***Rafique Masih (supra),*** paragraph-18 whereof is reproduced herein below:-

> *"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, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-*
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> *(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. Having regard to the facts and circumstances of the case as also considering the fact that the instant case is squarely covered by the law laid down by the Hon'ble Apex Court in the case of ***Rafiq Masih (supra)***, as aforesaid, the writ petition stands allowed and the order of recovery contained in Memo no. 454 dated 12.03.2018, issued by the Superintendent, Divisional

Jail, Madhepura to the Senior Treasury Officer, Gaya, whereby and whereunder it has been directed to recover a sum of Rs. 4,27,976/-, is quashed to the extent excess salary has been purportedly paid to the petitioner for the period 01.01.2006 to 31.10.2016 amounting to a sum of Rs. 3,68,964/-, inasmuch as firstly no recovery can be made from a retired employee especially pertaining to alleged excess payment of salary made over a period of about 10 years, which is wholly and entirely attributable to the negligence and latches on the part of the respondent- State Authorities, which had led to excess payment of salary over a period of 10/16 years and secondly, the said excess payment of salary was paid to the petitioner herein neither on account of any misrepresentation on the part of the petitioner nor fraud having been committed by the petitioner and moreover, in the entire counter affidavit, there is no whisper about the petitioner having any role to play in the matter of payment of excess salary to him, as aforesaid. Consequently, the communication of the Superintendent, Divisional Jail, Madhepura dated 26.02.2019, to the Senior Treasury Officer, Gaya, whereby and whereunder it has been directed to recover a sum of Rs. 5,21,552/-, is also quashed to the extent excess salary has been purportedly paid to the petitioner for the period

01.02.2000 to 31.10.2016 amounting to a sum of Rs. 4,62,540/-. At this juncture, it may be clarified that this Court is not interfering with the excess amount of earned leave paid to the petitioner, totalling to a sum of Rs. 35,830/- and excess amount of gratuity paid to the petitioner to the tune of Rs. 23,183/-, since the earned leave and gratuity amount had been calculated and paid to the petitioner prior to final fixation of pay and pension, hence the consequence of final pay fixation is bound to follow and have suitable effect on the pensionary benefits.

7. The writ petition stands allowed on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.05.2020
Transmission Date	NA