

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.20185 of 2018**

Prem Shankar Upadhya @ Prem Shankar Upadhyay Son of Late Suresh Upadhyay, Resident of Jawahar Mandir Dumraon, Police Station-Dumraon, District-Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Buxar.
4. The Sub-Divisional Officer, Dumraon.
5. The Establishment Department, Collectorate Buxar.
6. The Treasury Officer, Dumraon.
7. The Circle Officer, Bharampur, Buxar.

... .. Respondent/s

**Appearance :**

|                      |   |                               |
|----------------------|---|-------------------------------|
| For the Petitioner/s | : | Mr.Mrigendra Pratap Singh     |
| For the Respondent/s | : | Mr. Md.N.H.Khan, SC-1         |
|                      |   | Ms. Babita Kumari, AC to SC-1 |

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**  
**ORAL JUDGMENT**

**Date: 15.07.2019**

The present writ petition has been filed for quashing the order dated 29.08.2018, passed by the District Magistrate, whereby and whereunder the representation of the petitioner has been rejected and it has been directed to adjust/realise the excess amount of salary paid to the petitioner from the petitioner herein. It has been further prayed to grant second ACP with basic salary of Rs. 4600/- to the petitioner herein with effect from 30.12.2010 and not to realise any excess salary drawn by the petitioner herein.

The brief facts of the case are that the petitioner had passed the accounts examination belatedly, hence the benefits of first ACP and second ACP were granted late as per



the old regulation of the year 2003 with effect from 30.12.2010 by an order dated 11.01.2014, passed by the District Magistrate, Buxar. The petitioner is stated to have retired on 30.04.2018 whereafter the senior Treasury Officer, Dumraon by his letter dated 01.08.2018 had written a letter to the Circle Officer, Bahrampur that the salary of the petitioner has been wrongly fixed, hence excess amount paid to him should be recovered. Thereafter the District Magistrate, Buxar by the impugned order dated 29.08.2018 has taken a decision, with regard to the case of the petitioner, to address the objection raised by the District Accounts Officer, Bhojpur and has directed to recover the excess salary paid to the petitioner herein. The learned counsel for the petitioner has submitted that no recovery can be made after retirement of the petitioner herein.

Per contra, the learned counsel for the respondents, referring to the counter affidavit filed on behalf of the respondent nos. 3 to 7 has submitted that since the salary of the petitioner has not been fixed in accordance with the guidelines of the Finance Department, it has been decided to re-fix the pay of the petitioner and recover the excess amount of salary paid to the petitioner herein.

I have heard the learned counsel for the parties and



gone through the materials on record and I find that though no plausible explanation has been furnished by the respondents in their counter affidavit as to on what basis wrong pay of the petitioner was fixed but nonetheless keeping the principles laid down by the Hon'ble Apex Court in a catena of decision reported in (2009) 3 SCC 475 (Syed Abdul Qadir vs. State of Bihar); (1995) suppl. 1SCC 80 (Sahib Ram vs. State of Haryana); (1994) 2 SCC 521 (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 709 (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 reported in (2015) 4 SCC 334 (State of Punjab vs. Rafique Masih), no recovery can be effected from the petitioner herein as he has already attained the age of superannuation and moreover there has been no misrepresentation or fraud committed by the petitioner herein leading to excess payment of salary to him whereas on the contrary, it was the mistake of the respondents, if at all, which has resulted in payment of excess amount of salary to the petitioner herein.



This aspect of the matter has been specifically addressed by the Hon'ble Apex Court in a celebrated judgment rendered in the case of ***State of Punjab vs. Rafique Masih*** reported in ***(2015) 4 SCC 334***, paragraph no. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

- (i) *Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) *Recovery from 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.”*



Having regard to the facts and circumstances of the case as also for the reasons mentioned herein above, this Court finds that since there is no allegation of misrepresentation or fraud having been committed on the part of the petitioner herein resulting in excess payment of salary to him, no recovery can be made from the petitioner herein especially since such recovery is sought to be made after the superannuation of the petitioner on 30.04.2018. I further hold that the respondents are free to undertake the exercise of correct fixation of pay of the petitioner herein for the purposes of calculation of retiral dues, which shall be done within a period of eight weeks from today and on the basis thereof, the respondents shall pay the pensionary benefits to the petitioner within a period of 12 weeks from today, if not already paid, and in case any recovery has been made, the same shall be refunded to the petitioner herein within the same time frame.

The writ petition stands allowed to the aforesaid extent.

**(Mohit Kumar Shah, J)**

S.Sb/-

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