

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5623 of 2019

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Ram Kumar gupta S/o Late Raghuvir Prasad, Resident of Village and post
Office Bihta, P.S. Bihta, Dist.-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary Department of Human Resources Govt. of Bihar, Patna
3. The District Education Officer, Shekhpura, Dist.-Shekhpura
4. The District Magistrate, Shekhpura
5. The Accountant General, Bihar, Birchand Patel Marg, Patna
6. The Head Master Govt. High School Barbigha, Shekhpura
7. The District Accountant Officer, Shekhpura

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shivnandan Sah
For the Respondent/s : Mr.Madanjeet Kumar (Gp20)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 01-07-2019

The present writ petition has been filed for directing the respondents to make payment of the arrears of retiral dues as also arrears of salary including a sum of Rs. 2,39,793/- which has been arbitrarily withheld and not paid to the petitioner till date, although the petitioner has retired from the Government service while working as clerk, Government Barbigha High School, Sheikhpura on 30.04.2014.

2. The respondent no.3 i.e. the District Education Officer, Sheikhpura has filed a counter affidavit, wherein it has been stated that the petitioner was appointed on the post of clerk on compassionate ground on 24.10.1994, in place of his



deceased wife, whereafter he is said to have joined the said post on 29.11.1994 and retired from service on 30.04.2014. It is further stated in the said counter affidavit that during the service period of the petitioner, he was illegally allowed the benefits of annual increments from 01.04.1997 till the month of March, 2011 without passing Hindi noting and drafting examination and an excess amount of Rs. 2,39, 793/- was paid to the petitioner in terms of salary. After retirement, when the pension papers of the petitioner were being scrutinized by the office of the Accountant General, Bihar, certain discrepancies were found in the service book of the petitioner, especially regarding grant of annual increment without passing Hindi noting and drafting examination as also non-fixation of pay w.e.f. 01.01.2006 and its authentication by the District Accounts Officer, hence the service book of the petitioner was returned vide letter dated 09.07.2015 with a request to send the same after removing the objection raised by the office of the Accountant General. Thereafter, the pay of the petitioner was re-fixed/ re-calculated, after deducting the annual increments granted to the petitioner and it was found that an amount of Rs. 2,39,793/- has been paid in excess to the petitioner herein. The petitioner is stated to have appeared in the Hindi noting and drafting examination on



22.7.2012 and the result was published on 22.02.2013 wherein he was declared to have passed, hence the benefits of pay fixation was extended w.e.f. 23.07.2012.

3. The learned counsel for the respondents has further stated that during the calculation/ fixation of pay for the period 01.04.2011 to 30.04.2014, it was found that a further sum of Rs.2,31,676/- is payable, hence the same was adjusted in the excess amount paid to the petitioner and still a sum of Rs.8,117/- is outstanding, to be recovered from the petitioner. Lastly, it is contended that no amount whatsoever is remaining to be paid to the petitioner herein either on the head of arrears of outstanding salary or on the head of retiral benefits.

4. 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 herein as he has already attained the age of superannuation, since there was no misrepresentation or fraud committed by the petitioner herein leading to grant of wrong benefits of annual increment from 1.4.1997 till the month of March, 2011, without passing the Hindi noting and Drafting Examination. This Court further finds that admittedly, it was the wrong committed by the respondent- State authorities on account of which the aforesaid benefits of annual increments were granted wrongly to the petitioner without passing Hindi noting and Drafting examination, hence the said excess payments made to the petitioner herein amounting to a sum of Rs. 2,39, 793/- in terms of salary cannot be recovered from the petitioner herein.

5. In this regard it would be apt to reproduce paragraph-18 of the judgment rendered by the Hon'ble Apex Court in the case of **Rafique Masih** (supra) 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:

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

346(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. The present case being covered by a catena of decision laying down the law with regard to the issue under consideration in the present writ petition, apart from being squarely covered by the aforesaid judgment rendered in the case of **Rafique Masih (supra)**, this Court holds that the amount of excess salary paid to the petitioner to the tune of Rs. 2,39, 793/- cannot be recovered from the petitioner herein, hence it is required to be paid to the petitioner forthwith, i.e. within a period of four weeks from the date of receipt/ production of a



copy of this order.

7. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
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