

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21579 of 2011

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Meghwarn Prasad Sinha (Head Clerk, Retired), S/O Late Bank Prasad
Resident Of Village- Kalyanpur, P.S- Vidupur, District- Vaishali, At Present
Resident Of Mohalla- Vikas Nagar, P.O- Dighi Kala West, P.S- Hajipur Town,
Distt- Vaishali At Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Deptt. Of General Administration, Govt. Of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Deptt. Of Finance, Govt. Of Bihar, Old Secretariat, Patna.
4. The Principal Secretary, Deptt. Of Revenue and Land Reforms, Govt. Of Bihar, Old Secretariat, Patna.
5. The District Magistrate Cum Collector Vaishali, Distt. Vaishali At Hajipur.
6. The Additional Collector In- Charge Establishment Distt.- Vaishali At Hajipur.
7. The Deputy Collector, In-Charge District Establishment Section Distt.- Vaishali At Hajipur.
8. The Accountant General, Bihar, Bir Chand Patel Path, Patna-1.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Aditya Narayan, Adv. Mr. Akhilesh Kumar Sinha, Adv.
For the Respondent/s	:	Mr.Md.N.Hoda Khan SC1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 01-05-2019

Heard learned counsel for the parties.

In the present case, the relief has been sought for commanding and directing the respondent no.5 for compliance of the order dated 28.2.2009 passed in C.W.J.C. No. 10685 of 2002 with C.W.J.C. No. 1462 of 2003, whereby and whereunder, the Court has directed the respondents to issue show-cause to the



petitioner and pass a fresh order in accordance with law within a period of 12 weeks from the date of show cause but, in spite of the show-cause reply filed by the petitioner, yet no order yet has been passed causing serious prejudice to the petitioner.

In the present case, the petitioner was appointed as a Clerk on 9.5.1964, promoted on the Junior Selection Grade in the scale of Rs. 4000-6000/-, then was granted Senior Selection Grade equivalent to the Head Clerk on 1.4.1991 and continued on the said post. After the enforcement of 5th Pay Revision Commission, the scheme of grant of Time Bound Promotion was withdrawn. The Collector vide order no. 92 dated 5.8.1999 informed, need based post has been identified for each category including the Head clerk. The 68 posts of Head Clerk were identified, accordingly, was adjusted on the post of Head Clerk in the scale of pay of Rs. 5000-8000/-. The petitioner superannuated and, accordingly, the pension of the petitioner was fixed at the pay-scale of Rs. 5000-8000/- for Rs. 3843.00/- per month but, later on, the Collector has revised the number of need based post to 29 and, accordingly, the petitioner did not find berth as a Head Clerk and his pay-scale was reduced from 5000-8000/- to 4000-6000/- and, accordingly, his pension was also reduced causing recurring loss of Rs. 500/- per month.



This was also done with other retired employees, out of them, fifteen approached this Court in C.W.J.C. No. 10685 of 2002 with a prayer that their pay has wrongly been fixed at the lower pay scale. Separate writ application again filed being C.W.J.C. No. 1462 of 2003 by 43 employees including the present petitioner raising a grievance of wrong deduction and reduction of pay which he was getting on the promoted post and requesting for return of the amount. In both the writ applications, the grievance was raised that wrong fixation of pay and pension, has been done by the Collector in view of the fact that the petitioner has no role in identification of the post as well as his adjustment on the post of Head-clerk but, the authorities, without considering the impact of reduction of pay, re-fixed the pay-scale, that too, without giving any notice or show-cause which violates the basic principle of law and, accordingly, this Court set aside the impugned order with a direction to the State to revisit, issued fresh show-cause, after receipt of the reply, pass proper order and take action accordingly. In support of the submission, learned counsel for the petitioner submits that after disposal of the writ application, they filed a detailed representation stating, deduction of purported excess payment should not be done as well as the Collector should re-identify the need-based post which has been done arbitrarily in



exercise of power as initially 68 posts were identified and the petitioner was adjusted against the same but, the reason best known to them, he reduced the same to his prejudice without explaining reason as to how it has been done.

The law in this connection is very much settled as has been explained in C.W.J.C. No. 10685 of 2002 which is not required to be repeated as based on the basic premise that in the event, the promotion or up-gradation of pay is conferred or the person has been adjusted against the Head Clerek, was getting the pay of Rs. 5000-8000/-, before taking any action, they are at least required to follow certain basic rule to take a final decision. Already this Court has interfered with the order and there is no need to reiterate or repeat the same but, the show-cause, which has been filed by the petitioner, is still pending and, as has been stated, the same has not been disposed off till date.

It is well known principle of law that when an authority has taken any action prejudicial to the government servant, in such circumstances, it is expected that at least following the principle conforming to Article 14, a show-cause ought to have been served and, on reply, they could have taken a decision as per law. Since show-cause is still pending consideration, this Court directs the same should be disposed of, inasmuch as, in view of different



judgments of the Hon’ble Apex Court like in the case of State of Punjab & Ors. Vs. Rafiq Masih ((Whitewasher) & Ors. reported in (2014) 8 SCC 883, it has been held that any excess payment made to the 3rd and 4th class employee, after retirement, that cannot be recovered from him.

This Court also directs the respondent nos. 2 to 5 to identify the need-based post finally and take a decision in the case of the petitioner within a period of three months from the date of receipt/production of a copy of this order.

With the aforementioned observation and direction, this writ application is disposed of.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.05.2019
Transmission Date	

