

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5427 of 2015

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Bishwanath Lal Das Son of Late Pulkit Lal Das, Resident of Mohalla
Panchwati Colony, P.S. Digha, District Patna **... Petitioner**

Versus

1. The State Of Bihar through the Chief Secretary, Bihar, Patna
 2. The Principal Secretary, Home, Bihar, Patna.
 3. The Director General of Police, Bihar, Patna.
 4. The Inspector General (Technical Services and Communication), Bihar,
Patna.
 5. The Assistant Inspector General (Wireless) Bihar, Patna.
- Respondents

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Appearance :

For the Petitioner	:	Mr. Rajeev Kr. Verma, Senior Advocate and Mr.Karuna Nath Sahay, Advocate
For the Respondents	:	Mr.Karandeep Kumar, AC to GP 6

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 29-01-2019

Heard learned senior counsel for the petitioner as well
as learned counsel for the State.

By conceding to the fact that the provision of Modified
Assured Career Progression (hereinafter referred to as ‘the
MACP’) came into existence in January, 2009 it is submitted by
learned senior counsel appearing for the petitioner that petitioner’s
claim for benefits under the MACP cannot be admissible to him
since he retired much prior to coming 30.6.2008.

Other aspect which is subject of the instant proceedings
is that the petitioner was allowed Reducible Pay Protection
(hereinafter referred to as ‘the RPP’)) vide Office Order of 113/96
contained in Memo no. 223 dated 21.7.1996.



Since one junior to the petitioner namely Sri Jitendra Kumar, Assistant Sub-inspector of Police was getting a pay higher than the petitioner RPP was given to the petitioner with a rider that the same was being granted till the said Jitendra Kumar remained in the same category as the petitioner. More than a year thereafter on 12.9.1997 the petitioner was promoted as Sub Inspector of Police (Operation). On account of his promotion in the higher grade dis-parity in the petitioner's pay with that of Jitendra Kumar, Assistant Sub Inspector of Police did not exist as the said Jitendra Kumar being junior to the petitioner remained as Assistant Sub Inspector.

As per terms of grant of RPP, the petitioner thereafter upon his promotion as Sub Inspector on 12.9.1997 was no longer entitled to the benefits of RPP.

The excess payment on account of RPP beyond 12.9.1997 was withdrawn and recovery of the amount of Rs.56,235/-was adjusted against retiral dues of the petitioner. The petitioner wants that the said amount be refunded to him which was recovered from him in the year 2008.

It is submitted by learned Senior counsel appearing for the petitioner that the recovery could not have been effected in view of law laid down by Hon'ble Apex Court in case of **State of**



Punjab and others Vs. Rafiq Masih (White Washer) and others; (2015) 4 SCC 334. Reliance is placed on paragraph 18 of the said judgment wherein situation of hardship has been elaborated wherein recovery may not be justified. In the instant case, recovery is not to be made in future. The same has already been done way back in 2008 and as of today petitioner has sought refund of the recovered amount of Rs.56,235/- which was recovered from him in the year 2008. Further, from the case of petitioner as is apparent from order dated 7.3.2014, passed in his earlier writ petition bearing C.W.J.C.No. 20519 of 2010 it is apparent that the RPP was granted with a rider. It was continued till junior remained in the said category. Upon his promotion as Sub Inspector on 12.9.1997 there was no disparity which was required to be bridged by grant or continuance of RPP. He was not entitled to grant of RPP thereafter. Recovery of RPP paid to the petitioner wrongly thereafter is therefore justified.

A plea has been raised regarding hardship relying upon the decision in case of **Rafiq Masih (supra)**. Learned senior counsel has relied upon specific clause (ii) and (iii) of paragraph 18 of the aforesaid judgment in support of the claim for refund of amount already recovered from the petitioner. The judgment relied upon is with respect to hardship in respect of recovery to be made.



In the instant case recovery has already been made long back therefore there is no question of any hardships and reliance placed on judgment in the case of **Rafiq Masih (supra)**, is misplaced. This Court does not find that the claim of the petitioner is covered by the aforesaid judgment. This Court would also observe that quantum of recovery is neither harsh nor arbitrary. The benefits of the said judgment therefore cannot be extended to the petitioner.

Prayer made in the writ petition is therefore devoid of merit and the writ petition is dismissed.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
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