

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22696 of 2018

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Ramashraya Sharma Son of late Rajeshwar Singh @ Rajeshwar Sharma,
Resident of Khadasin, P.S. Karpi, District- Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. Director in Chief (Administration), Department of Health, Government of Bihar, Patna.
3. The Accountant General, Bihar, Patna.
4. Chief Account Officer, Office of Accountant General, Bihar, Patna.
5. Assistant Account Officer, Office of Accountant General, Bihar, Patna.
6. Incharge Medical Officer, Primary Health Centre, Sonbhadra Bansi Surgpur, District- Arwal.
7. Treasury Officer, Arwal.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shiv Kumar
For the Respondent/s : Mr.Rajeshwar Singh

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 14-08-2019

The present writ petition has been filed for quashing that part of the order passed by the respondent no.4 dated 11.09.2018 whereby and whereunder the Treasury Officer, Arwal has been directed to recover an amount of Rs. 1,38,633/- from the gratuity and pensionary benefit of the petitioner herein.

2. The learned counsel for the petitioner has submitted that no show cause notice has been issued to the petitioner prior to issuance of the aforesaid direction for recovery of the said amount of Rs. 1,38,633/-. It is further submitted that neither any proceeding is pending against the petitioner under Rule 43(B) or Rule 139 of the Bihar Pension Rules nor the petitioner has been inflicted with any punishment, hence, the recovery sought to be made, is perverse and fit to be set aside.



3. Per contra, the learned counsel for the State, referring to the counter-affidavit filed on behalf of the respondent no.6 i.e. the Incharge Medical Officer, Primary Health Centre, Sonbhadra Bansi Surajpur, District Arwal, has submitted that in pursuance to the notification issued by the Finance Department, Bihar, Patna dated 30.06.2003 and the notification dated 23.03.2006, the District Screening Committee, in its meeting dated 08.01.2007 granted promotion in pay scale to the petitioner and others as per the A.C.P. Rules, 2003. Thereafter, the District Screening Committee, in its meeting dated 29.03.2011, had granted benefit to the Government employees as per the A.C.P. Rules, 2010. Subsequently, the Under Secretary, Finance Department, Bihar, Patna by its letter dated 26.09.2016 clarified that the salary of Basic Health Worker w.e.f. 01.01.1996 shall be 3050-4590 and w.e.f. 01.01.2006 shall be P.B.-1 + Grade Pay of Rs. 1900/-. In the said letter dated 26.09.2016, the pre-revised and the revised pay scale after grant of 1st A.C.P., 2nd A.C.P. and 3rd A.C.P. was also stipulated. The learned counsel for the respondent no.6 has further submitted that upon perusal of the Service Book of the petitioner herein it had transpired that the District Screening Committee in its meeting held on 30.06.2011 had given wrong grade pay to the petitioner herein and instead of fixation of grade pay of Rs. 2800/-, a sum of Rs. 4200/- was allowed after grant of 3rd A.C.P. to the petitioner which was incorrect. Accordingly, corrections have been made in the pay scale of the petitioner herein and the excess amount paid to the petitioner on account of wrong fixation of grade pay, has been calculated and directed to be recovered from the pension and gratuity amount payable to the petitioner herein.



4. I have heard the learned counsel for the parties and have gone through the materials on record and I find that the respondents have not levelled any allegation against the petitioner herein that he had either misrepresented or committed fraud for the purposes of wrong fixation of pay/ grant of grade pay and, in fact, the respondents have conceded that wrong pay fixation was done on account of their mistake. The law in this regard is well settled, as has been laid down in a catena of decisions by the Hon'ble Apex Court 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 Electric ity Board vs. Bijay Bhadur**); (2006) 11 SCC709 (**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**).

5. According to the principle of law settled in the aforesaid judgments, rendered by the Hon'ble Apex Court, no recovery can be effected from the petitioner herein, firstly since he has already attained the age of superannuation prior to passing of the order of recovery and secondly since there has been no misrepresentation or fraud committed by the petitioner herein leading to wrong pay fixation/ wrong grant of grade pay, thus the respondent authorities are precluded from making any recovery from the petitioner herein.

6. It is trite law that in case excess payment has been made on account of wrong pay fixation/ grade pay, without there



being any misrepresentation or fraud on the part of the employees but on account of the mistake of the employer, no recovery of the amount paid in excess to such an employee can be made and the entire process of recovery is rendered iniquitous and arbitrary. The latest judgment in this regard is one rendered by the Hon'ble Apex Court in the case of **Rafiq Masih** (supra), paragraphs 18 and 19 whereof are 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.

19. We are informed by the learned counsel



representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated herein above. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.”

7. This Court is of the view that the present case is squarely covered by the aforesaid judgment rendered by the Hon’ble Apex Court in the case of **Rafiq Masih** (supra) especially since the petitioner has already stood superannuated and secondly it is the mistake of the respondents, admittedly, which has resulted in excess payment to the petitioner herein on account of wrong fixation of pay/ grade pay. Thus, this Court is left with no option, in the facts and circumstances of the present case, but to quash the order dated 11.09.2019 issued by the office of the Accountant General (A & E), Bihar, Patna to the extent recovery has been sought to be made to the tune of Rs. 1,38, 633/- from the gratuity and pension amount payable to the petitioner herein. The respondents are further directed to refund the said amount of Rs. 1,38,633/- to the petitioner herein within a period of twelve weeks from today.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	04.10.2019
Transmission Date	N/A

