

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17141 of 2017

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Baliram Singh S/o Late Ram Ekwel Singh, Resident of Village- Arai, P.S.-
Shahjahanpur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Department of Secondary Education, Bihar, Patna.
3. The District Education Officer, Sheikhpura.
4. The District Programme Officer Establishment, Sheikhpura.
5. The Accountant General, Bihar, Patna..

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashok Kumar Singh, Advocate
For the Respondent/s : Mr.Ashutosh Ranjan Pandey -AAG-15

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

6 11-11-2020 Heard learned counsel for the petitioner and the

State.

Earlier the petitioner had approached this Court in
CWJC No. 20001 of 2010 which was disposed of by order dated
11.05.2015. The relevant part of the said order is quoted in the
order dated 27.05.2020. For ready reference the order dated
27.5.2020 is quoted below as follows:-

“Heard learned counsel for the petitioner
and the State as well as the Accountant General.

The petitioner had earlier approached this
Court in CWJC No. 20001 of 2010. the writ
application was disposed of vide order dated
11.05.2015. The relevant parts of the order reads as



follows:-

“14. Thus, in view of the law laid down by the Apex Court in the case of Rafiq Masih (supra), this Court will have no difficulty in quashing the impugned order and directing the authorities to refund the amount of Rs. 96,227/- to the petitioner forthwith and in any event within a period of three months from the date of receipt of this order.

15. Before parting with this Court however must make it clear that though the petitioner will be entitled to refund of the recovered amount of Rs. 96,227/- but his all other retirement benefit shall be calculated and paid on the basis of actual entitlement of his salary without the benefit of annual increments. In other words, the last pay drawn by the petitioner shall be fixed without the benefit of increment and payment of all the retirement benefits would be based on his such 1st pay and not on the pay that he was drawing at the time of his retirement inasmuch as this aspect has also been clarified in the same judgment of the Apex Court in the case of Rafiq Masih (supra) wherein it has been held that though the excess payment made cannot be recovered but then payment in future of the employee concerned has to be made on the basis of actual receivable salary. Thus, if the



petitioner has been paid any retirement benefit on the basis of his last salary drawn with annual increments and not on the basis of his actual receivable and entitlement, the respondents would be entitled to make necessary adjustment of such amount before refunding the amount of Rs. 96,227/- already recovered by way of excess salary by the petitioner.

16. This application is accordingly allowed only to the extent indicated above.

After the order dated 11.5.2015, the pension of the petitioner was fixed at Rs. 2167.

Learned counsel for the petitioner would submit that the respondents have acted in teeth of the order passed by this Court on 11.5.2015 in CWJC No. 20001 of 2010.

Counsel for the respondents, on the other hand, would submit that the respondents have acted strictly in accordance with the order of this court.

Considering the rival contention of the parties, the Court directs the respondents to file counter affidavit so that the writ petition may be finally disposed of at the earliest.

Put up this case for admission on 22nd of June, 2020 within first five cases.

In the meanwhile, the respondents are directed to file their counter affidavit, otherwise, the Court may proceed as if the respondents have nothing to controvert the averments made in the



writ petition.”

Counsel appearing on behalf of the petitioner would submit that the pension of the petitioner has been fixed after the order dated 11.5.2020 at Rs. 2167/-. however, the amount of Rs. 96 thousand and odd, which was directed to be refunded, has been adjusted by the respondents. The petitioner has received pension on the basis of last pay drawn. He was paid pension at the rate of Rs. 2315/- and after the order of this Court dated 11.5.2015, the respondents have reduced it to Rs. 2167/- and adjusted the alleged excess amount which was paid to the petitioner. Learned counsel submits that such exercise of power is abuse and contrary to the law laid down by the Apex Court in the case of State of Punjab & Ors. Vs. Rafiq Masih (white washer), etc.: 2015 (1), PLJR (SC) 261= (2015) 4 SCC 334. Whatever was paid to the petitioner prior to 11.05.2015 was as per the pension fixation which cannot be adjusted.

Considering the totality of the fact situation, the Court directs the respondents to refund the amount which they have adjusted in the process of refunding Rs. 96 thousand and odd in terms of the order dated 11.05.2015.

It is made clear that whatever was paid on the basis of last pay drawn as pension shall not be recovered. However, the petitioner shall not be entitled to pension beyond Rs. 2167



which was determined by the authorities after the order of this Court dated 11.05.2015. If any amount which has been adjusted by the respondents, the same shall be refunded to the petitioner forthwith.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

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