IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11418 of 2018

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Sudama Yadav Son of Late Nageshwar Yadav Resident of Village - Garhi Bishanpur, P.S. - Lakhisarai, District - Lakhisarai.

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Accountant General, Bihar, Patna.
3. The Principal Secretary, Education Department, Bihar, Patna.
4. The Director, Primary Education, Bihar, Patna.
5. The District Education Officer, Lakhisarai.
6. The District Programme Officer Establishment, Education Department, Lakhisarai.
7. The District Treasury Officer, Lakhisarai.
8. The Block Education Officer, Lakhisarai.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siyaram Shahi
		Mr.Sanjeev Kumar
For the Respondent/s	:	Smt. Shilpa Singh- GA-12
For Accountant General		Mrs. Nivedita Nirvikar, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 30-07-2021

This matter has been taken up for hearing *online* because of COVID-19 pandemic restrictions.

2. Heard Mr. Siyaram Shahi, learned counsel for the petitioner, Mrs. Shilpa Singh, learned Government Advocate No.12 appearing for the State and Mrs. Nivedita Nrivikar, learned Senior counsel appearing for the Accountant General.

3. The petitioner claims that he has retired with

effect from 31.12.2017, while holding the post of Head Master, Lakhisarai in the district of Lakhisarai. He has filed the present writ application seeking direction to the respondents to pay his post retiral dues.

4. Counter affidavits and supplementary counter affidavits have been filed on behalf of the respondents. In the counter affidavit filed on behalf of respondent No.6, it was stated that the petitioner had been paid all the post retiral dues except for pension, which could not be finalized because of absence of no objection certificate. It transpires that the Accountant General, Bihar had raised certain objections in respect of grant of higher grade pay and increments to the petitioner simultaneously contrary to resolution of the State Government of Bihar, which clearly stipulated that if a promotion was granted in the same grade pay, the employees shall not be entitled to any increment. The petitioner had received salary with higher grade pay and increment at the same time contrary to the said stipulations. It was, accordingly, the opinion of the Accountant General that the petitioner had received amount against salary in excess to what he was legally entitled to. The Accountant General had accordingly asked the State respondents to re-submit the pension papers of the

petitioner. The pension papers were subsequently submitted by the concerned office of the State of Bihar to the Accountant General through letter dated 09.04.2018, informing that a total sum of Rs.4,99,418/- had been paid in excess on account of grant of higher grade pay and annual increment after grant of promotion on the post of Head Master. It was further pointed out that a sum of Rs. 169050/- had been paid in excess against un-utilized earned leave, which also deserved to be adjusted. After receipt of the revised pension papers, the Accountant General, Bihar authorized payment of pension on 22.05.2018.

5. The petitioner has filed I.A. No. 01 of 2021 for seeking amendment in the relief portion of writ petition for quashing of letter No. 548 dated 27.02.2018 issued by the District Programme Officer(Establishment), Lakhisarai and letter No. 30 dated 09.04.2018 issued by Drawing and Disbursing Officer, Purani Bazar Middle School, Lakhisarai, whereby the excess amount paid to the petitioner towards salary is also sought to be challenged. The petitioner is thus, also seeking a direction to the Accountant General to revise his pension on the basis of last pay drawn by way of amendment through I.A. No. 01 of 2021.

6. Considering the nature of amendment, which

the petitioner is seeking, the same is allowed. The relief sought for by the petitioner stands, accordingly, amended and accordingly, it is ordered that additional relief sought for through I.A. No. 01 of 2021 shall form part of the main writ application. Further, the averments made in the interlocutory application have been treated to be averments made in the writ application, for the purpose of present proceeding.

7. When the matter was taken up by this Court on 06.07.2021, it had required the Accountant General, Bihar to file supplementary counter affidavit, disclosing clearly the calculation of amount, which has been found to have been paid to the petitioner in excess to his actual entitlements. The Accountant General was also required to disclose the basis for reaching a conclusion that the amount paid to the petitioner was in excess to the petitioner's actual entitlements. Pursuant to the said direction a supplementary counter affidavit has been filed on behalf of the Accountant General stating in paragraphs 6,7 and 8 as under:-

> "6. That after compliance made by sanctioning authority, the necessary pension authority issued in favour of the petitioner under intimation to the department. The calculation of

basis salary in light of order dated 06.07.2021 passed by Hon’ble Court is as below:-

Fixation by Department	Fixation by this respondent office
01.07.2010-23490(G.P.4800/-)	23490/- (G.P.-4800/-)
01.07.2011-24200	24200
01.07.2012-24930	24930

7. That the petitioner is promoted to the post of Headmaster on 08.03.2013 as per resolution no. 630 dated 21.01.2010, no increment is payable to beneficiary after getting promotion in same grade pay.

8. That according to schedule III of Finance department resolution no. 630 dated 21.01.2010 grade pay of Rs. 4800/- is admissible to Headmaster of Middle School.”

8. It has further been stated that in terms of letter No. 1846 dated 25.05.1977 issued by the Director (School Education) Bihar, the Headmaster of Middle School had to pass Hindi Noting and Drafting examination within one year from the date of promotion as Headmaster else he shall not be entitled for any increment. The fixation of basic salary of the

petitioner has been elaborately dealt in paragraph 10 of the counter affidavit filed on behalf of the Accountant General, Bihar.

9. A rejoinder affidavit has been filed on behalf of the petitioner to the said supplementary counter affidavit filed on behalf of the office of the Accountant General, Bihar.

10. Mr. Siyaram Shahi, learned counsel appearing on behalf of the petitioner has relied on communication dated 19.02.2014 of the Joint Secretary, Education Department, Govt. of Bihar addressed to the Accountant General Bihar, which has been brought on record by way of Annexure-K to the supplementary counter affidavit filed on behalf of the State of Bihar that in no circumstance, passing of Hindi noting and drafting examination could have been the basis for reaching a conclusion that the petitioner was not entitled for increment, in view of the clear exemption from department examination dated 19.02.2014. He further submitted that in any view of the matter, in view of the Supreme Court's decision in case of **State of Punjab Vs. Rafiq Masin** reported in **2015(1) PLJR(SC) 261**, after lapse of so many years, the respondents ought not to have taken a decision to recover the amount already paid, though in excess to the petitioner's actual entitlements, in absence of any

allegation of misrepresentation or fraud.

11. It is to be noted that the Accountant General Bihar has referred to a communication dated 06.06.2019 emanating from Finance Department, Govt. of Bihar addressed to the Deputy Accountant General, Bihar, Pension in support of the statement that the petitioner was not entitled to increment after his promotion as Headmaster and he was entitled to grade pay only. The said communication has been brought on record by way of Annexure-F to the counter affidavit.

12. Mr. Shahi, learned counsel for the petitioner has argued that the said communication dated 06.06.2019 nowhere stops payment of increment.

13. As regards requirement of passing of Hindi noting and drafting examination, he has submitted that there is provision for exemption from passing of such examination for which the petitioner has already made a representation.

14. It has been argued on behalf of the State of Bihar that the respondents have rightly reached a conclusion that the petitioner received amount more than his actual entitlements and he was not entitled to payment of increment, he having been already granted grade pay after his promotion to the rank of Headmaster. It has further been submitted, with

reference to the statement made in the supplementary counter affidavit that the exemption as allowed in Annexure-K is in relation to the passing of the departmental examination and not in relation to Hindi noting and Drafting examination.

15. Mrs. Nivedita Nirvikar, learned Senior counsel appearing on behalf of the Accountant General, relying on the supplementary counter affidavit filed on behalf of the Accountant General, has submitted that the office of the Accountant General after having noticed that the petitioner had withdrawn salary after adding increment also in addition to grade pay higher than what was admissible to him, the office had rightly raised objection and returned the pension papers. She has submitted that in view of the calculation of the amount received by the petitioner in excess of the actual entitlements as disclosed in the counter affidavit, the amount deserves to be recovered from the petitioner’s entitlements.

16. After having perused the pleadings on record and after having considered the rival submissions made on behalf of the parties, there does not appear to be much dispute regarding the fact that the amount which the petitioner had received while working as Headmaster was more than his actual entitlements inasmuch as he received increment, which he was

not entitled to after having been granted grade pay. Further, his grade pay was also fixed higher than his actual entitlements. The petitioner himself was the drawing and disbursing officer and, therefore, submission that the payment was made to him without any misrepresentation on his part cannot be accepted by this Court.

17. As regards passing of Hindi noting and drafting examination, in view of the submission advanced on behalf of the petitioner that an application seeking exemption is pending before the District Programme Officer (Establishment) Lakhisarai since 20.11.2014,, it is directed that let a decision be taken on the said representation within eight weeks from the date of receipt/production of a copy of this order. If the said representation finds favour with respondent No.4, the respondent shall proceed accordingly, if required, for adjustment of the amount paid to the petitioner in excess, accordingly.

18. The Court expects, in the peculiar facts and circumstances of the present case that the respondent no.4 shall consider the petitioner's application for exemption favorably, if not impermissible, in accordance with law.

19. Mr. Shahi, learned counsel has submitted that the petitioner was though Headmaster, he was in Group-

C/Group-D service of the State Government and, therefore, the Supreme Court's decision in case of **State of Punjab Vs. Rafiq Masin** (supra), applies with full force. The said submission is totally misconceived considering the status of the petitioner as drawing and disbursing officer which is accordingly rejected.

20. In the Court's opinion, in the admitted facts and circumstances of the case, the recovery from the petitioner cannot be said to be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

21. This application stands disposed of with the aforesaid observation and direction.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.08.2021
Transmission Date	