IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23338 of 2018

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Arimardan Singh Son of Dev Narayan Singh R/o Village-Bardiha Prasuram, P.S. Lar, District-Deoria, State Uttar Pradesh

... ... Petitioner/s

Versus

1. The State Of Bihar through the Director, Consolidation of Holdings (Chakbandi), Bihar, Patna
2. The Joint Director, Consolidation of Holdings Chakbandi, Bihar, Patna
3. The Accountant General, Bihar, Patna
4. The District Accountant Officer, Rohtas Sasaram
5. The Consolidation Officer Chakbandi, Chand, Kaimur
6. The Senior Treasury Officer, Kaimur Bhabhua

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shubh Narain Singh, Adv.
For the State	:	Mr.Sajid Salim Khan, SC-25
For the Accountant General	:	Dr. Anand Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

13 20-06-2022 The present writ petition has been filed seeking a direction upon the Respondents not to recover excess pay paid to the petitioner.

The petitioner is stated to have been appointed as Draftsman on 2.1.1970 and finally, he had superannuated with effect from 30.4.2009. It appears that there was certain discrepancy in grant of pay-scale to various draftsman and the consequential benefits on account of grant of ACP / MACP.

It is the case of the Respondent-State that the pay-scale of the petitioner was wrongly fixed as Rs. 4500-7000/- in place of Rs. 4000-6000/- with effect from 1.1.1996 on account of certain confusion, resulting in the petitioner being granted pay-scale of category-I / Senior Draftsman, to which he was not entitled. It appears that the said discrepancy could not be rectified during the service tenure of the petitioner and instead the petitioner superannuated with effect from 30.4.2009, whereafter the Respondent authorities realized in the year 2017 that the petitioner has been granted wrong pay-scale, thus, sought to recover the excess amount of pay paid to the petitioner and accordingly, the office of the Accountant General, Bihar, Patna, passed an order dated 2.8.2017, directing the Treasury Officer, Bhabhua to not only recover a sum of Rs. 98,945/- from the pensionary benefits of the petitioner on account of excess pay paid to the petitioner while granting ACP but also a sum of Rs. 36,630/- on account of excess gratuity paid to the petitioner on account of aforesaid discrepancy in fixing the pay-scale.

The learned counsel for the petitioner has submitted that it is the well-settled principal of law that in case, there is no misrepresentation on the part of the employee and on the contrary on account of mistake of the employer, excess amount is paid, no recovery is permissible, specially after superannuation.

Per contra, the Respondent-State has submitted that the pay of the petitioner along with other similarly situated draftsman was wrongly fixed in the pay-scale of 4500-7000/- instead of Rs. 4000-6000/-, hence, immediately upon detection of the said discrepancy, the excess amount paid to the petitioner, not only under the head of pay, on account of wrong fixation of pay / wrong calculation of the benefits granted by way of ACP, but also on account of excess payment made on the head of gratuity, has been sought to be recovered by the impugned order dated 2.8.2017.

I have heard the learned counsel of the

parties and gone through the materials available on record. The law on the subject matter is well-settled and it has been continuously held in a catena of cases that in case, there is no misrepresentation on the part of the employee, recovery from the said employee is impermissible in law especially after retirement. In this regard, it may be useful to refer to a catena of decisions, reported in (2009)3 SCC 475 (Syed Qadir vs. State of Bihar); (1995) Suppl.1 SCC 80 (Sahib Ram vs. State of Haryana); (1994) 2 SCC 52 (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 Electricity Board vs. Bijay Bhadur); (2006) 11 SCC 7089 (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 (2015) 4 SCC 334 (State of Punjab vs. Rafique Masih).

The Hon’ble Apex Court times without

number has reiterated the well settled principle of law to the effect that no recovery can be effected from such employees, who have already attained the age of superannuation, since there has been neither any misrepresentation nor any fraud has been committed by such employees leading to payment of excess amount of salary whereas it is the negligence and the latches on the part of the employer / authorities which has led to excess payment of salary. The present case is squarely covered, not only by a catena of judgments rendered by the Hon’ble Apex Court, referred to herein above, but also by the latest judgment rendered by the Hon’ble Apex Court in the case of Rafique Masih (supra), paragraph-18 whereof is reproduced hereinbelow:-

> “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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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".

Having regard to the law laid down by the Hon'ble Apex Court in the case of *Rafique Masih* (supra), as also considering the facts and circumstances of the present case and for the reasons mentioned hereinabove, this Court finds that the impugned order dated 2.8.2017, issued by the office of the Accountant General (A & E), Bihar, Patna, is not sustainable in the eyes of law, hence, the same is quashed. Consequently, the Respondents are directed to refund the amount recovered, if any, to the petitioner herein forthwith.

The writ petition stands allowed.

(Mohit Kumar Shah, J)

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