IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19783 of 2018

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Nirmala Devi Wife of Late Bibhuti Prasad Singh Resident of Village Telghi, P.S. Kharik, District- Bhagalpur.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Accountant General (A and E), Bihar, Patna.
4. The Superintendant of Police Bhojpur, Arrah.
5. The Sr. Treasury Officer, Bhagalpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sambhu Sankar Thakur, Advocate.
For the Respondent/s	:	Mr. Kumar Sanu, AC to AG.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 22-12-2022

Heard Mr. Sambhu Sankar Thakur, learned counsel for the petitioner and Mr. Kumar Sanu, learned AC to AG for the State.

2. The present writ petition has been filed seeking quashing of the order as contained in Memo No. 202/Lekha dated 28.02.2018 issued under the signature of Superintendent of Police, Bhojpur, whereby a direction has been issued to deduct Rs.16,56,274/- from the pension approved to the deceased Asst. Sub-Inspector of Police, Mr. Bibhuti Prasad Singh and the family pension payable to the petitioner who happens to the widow of late Asst. Sub-Inspector of Police. Further prayer has been made for direction upon the respondent to pay the pension amount due till

the death of the petitioner's husband and also to pay family pension to the petitioner from the date of death of her husband who was a government servant.

3. The short facts which led to the filing of the present writ application is that the husband of the petitioner was appointed as constable on 01.07.1979 and after serving in different districts of Bihar, was promoted as Asst. Sub-Inspector of Police on 31.03.2008 and was posted in the District of Bhojpur, and finally he superannuated on 30.09.2016.

4. It is contended that having been superannuated the petitioner's husband was paid GPF amount and provisional gratuity amount to the tune of Rs. 3,22,126/- and was also allowed provisional pension till his death. The husband of the petitioner unfortunately died on 02.09.2017, however, just after his death, on an objection made by the District Account Officer, Bhojpur/Accountant General (A &E) Bihar Patna, the Superintendent of Police, Bhojpur, issued order as contained in Memo No. 202/Lekha dated 28.02.2018, directing the treasury officer, Bhagalpur to deduct an amount of Rs.16,56,270/- which is said to have been paid in excess of pay during the whole tenure of service of the deceased husband of the petitioner, who had superannuated from the post of Asstt. Sub Inspector.

5. A counter affidavit has been filed on behalf of the respondent No.4 and the learned counsel for the respondent by referring to the statement made in paragraph no.6, vehemently submits that the late husband of the petitioner superannuated from the service in 2016 after attaining the age of his superannuation and thereafter, his service book was sent to the District Account Officer for verification and in course of verification, objection was raised by the District Account Officer, to the effect that the husband of the petitioner was dismissed from service but later on reinstated, however, the intermediate period between dismissal and reinstated was adjusted as extra-ordinary leave. The husband of the petitioner was not entitled for salary during said period, but he has been allowed the payment of the salary for such period and the said period was further taken into account while granting benefit of A.C.P. It is further contended that acting upon the said objection, the District Account Officer, Bhojpur has issued letters to the Accountant General, Bihar Patna and finally considering the aforesaid fact the respondent no.4 has issued the impugned order directing to deduct the amount in question.

6. Having heard the learned counsel for the petitioner as well as learned counsel for the state and considering the materials available on record, there are certain admitted facts which are

required to be taken note of that the petitioner was reinstated after setting aside of the dismissal order and thereafter, he was allowed the benefit of salary as also financial progression under the Assured Carrier Progression scheme during his service period.

7. It is not the case of the respondent that the petitioner was instrumental in getting the benefit of A.C.P. on account of any suppression or misrepresentation. Further, before the retirement of the erstwhile employee at no point of time any show cause notice or opportunity of hearing has ever been given to him with regard to the excess payment allegedly paid to him.

8. It is needless to say that any action having civil consequences cannot be taken in respect of a person without providing him an opportunity of hearing. It is the cardinal principle of administrative law that any order causing civil or evil consequences must be in conformity with the principle of natural justice, otherwise it would be a nullity.

9. The issue with regard to the recovery from the class IV/Class III employee has stood settled by various judgments rendered by the Hon'ble Apex Court in the case of **Syed Abdul Qadir Vs. State of Bihar & others, (2009) 3 SCC 475** as also the case of **State of Punjab Vs Rafiq Masih (White Washer) & others (2015) 4 SCC 334.**

10. It would be apt and proper to quote para 27 and 28 of the judgment rendered by the Hon'ble Apex Court in the case of **Syed Abdul Qadir (supra)**.

> *27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the Patna High Court CWJC No.14696 of 2021 dt.09-11-2022 9/13 employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State*

Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99.

28. Undoubtedly, the excess amount that has been paid to the appellants – teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be Patna High Court CWJC No.14696 of 2021 dt. 09-11-2022 10/13 held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants teachers should be made."

11. Further the Hon'ble Apex Court in the case of **State of Punjab Vs Rafiq Masih (supra),** held as follows:-

*"**8.** As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of*

the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

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."

12. In view of the admitted facts and the settled legal position this court finds substance in the submissions of the petitioner and accordingly, the impugned order dated 28.02.2018 as contained in Annexure 2 is hereby quashed.

13. The respondent authorities are hereby directed to ensure all the benefits/arrears of retiral benefits to the petitioner on the basis of the last pay drawn by the erstwhile employee in accordance with law preferably with a period of 12 weeks from the date of receipt/production of a copy of this order.

14. Accordingly, the present writ application stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.01.2023.
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