

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10220 of 2021

Haseeb Ahmad Khan Son of Late Umar Syeed Khan, resident of Village - Paithan Kabai, Ward No. 5, P.S. - Manigachhi, District - Darbhanga, Bihar, presently posted as Havildar at the Crime Investigation Department (Patel Bhawan), Bailey Road, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Accountant General of Bihar, Patna, Bihar.
3. The Principal Secertary, Department of Home (Police), Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Home Secretary, Government of Bihar, Patna.
6. The Director General of Police, Bihar, Patna.
7. The Additional Director General of Police, Crime Investigation Department (CID), Bihar, Patna.
8. The Deputy Inspector General, Crime Investigation Department (CID), Bihar, Patna.
9. The Superintendent of Police (C), Crime Investigation Department (CID), Bihar, Patna.
10. In-charge, Account Section, Crime Investigation Department (CID), Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prashant Kumar, Advocate
For the State	:	Mr. Suman Kumar Jha, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 22-02-2022

Heard learned counsel for respective parties.

In the instant petition, petitioner has prayed for the following relief(s):-

“(i) For issuance of appropriate writ, order or direction in the nature of Certiorari for quashing and setting aside the resolution



issued by the State Government vide Memo No. 9615 dated 12.11.2018 (Annexure-2) (to the extent it is applicable to the Petitioner) whereby pay-fixation and ACP benefits to the Petitioner was revised discriminatively and retrospectively and a direction was issued for recovery/deduction of the purported excess amount from the respective Salaries/pension paid to the employees pursuant to the resolution as contained in Annexure -1.

(ii) For issuance of appropriate writ, order or direction in the nature of Certiorari for quashing and setting aside the Crime Investigation Department Order No. 1172/2019 issued vide Memo No. 3097 dated 20.11.2019 (to the extent it is applicable to the Petitioner) (Annexure 3) in compliance of the State Government Resolution No. Memo No. 9615 dated 12.11.2018 (Annexure 2) pursuant to which the revision in pay band fixation and ACP benefits of the Petitioner has been made effective with a direction for recovery/deduction of the purported excess amount from the respective salaries/pension paid to the employees.

(iii) For issuance of appropriate writ, order or direction in the nature of Mandamus thereby interdicting the Respondents from giving effect to and staying the operation of the resolution vide Memo No. 9615 dated 12.11.2018 (Annexure 2) and Crime Investigation Department Order No.



1172/2019 issued vide Memo No. 3097 dated 20.11.2019 (Annexure 3) to the extent it is applicable to the Petitioner, during the pendency of the present writ application before this Hon'ble Court.

(iv) For grant of such other order or direction for which iv.) the Petitioner is found entitled to in the facts and circumstances of the case.”

On 15.02.2022, the following order was passed:-

“This matter is heard via video conferencing due to circumstances prevailing on account of the COVID-19 Pandemic.

State counsel is hereby directed to verify as to whether order dated 12.11.2018 in respect of revising the ACP benefit which has been granted to the petitioner is ordered to be revising ACP benefit and order of recovery is with notice or without notice. He is also hereby directed to verify whether the matter is covered by decision in CWJC No. 4864 of 2021 or not?

Relist this matter for physical hearing on 22.02.2022.”

Learned counsel for the State on instruction submitted that before impugned action is taken by the concerned respondent petitioner has not been provided notice. The petitioner was ex-



tended ACP benefit and it was abruptly withdrawn on 12.11.2018 (Annexure-2) and ordered for recovery.

Petitioner is a Constable and it is a Group C post. Therefore, insofar as the recovery is concerned, matter is squarely covered by the decision of Hon'ble Apex Court in the case of **State of Punjab vs. Rafiq Masih** reported in **(2015) 4 SCC 334**. Insofar as re-fixation of pay/ACP is concerned, petitioner is entitle to show cause notice.

In the light of these facts and circumstances, order dated 12.11.2018 (Anneuxure-2) stands set aside. Accordingly, the present petition stands allowed reserving liberty to the respondents to initiate a fresh proceedings in accordance with law after giving ample opportunity of hearing to the petitioner. The above exercise shall be completed within a period of three months from the date of receipt of this order. If any recovery is effected, the same shall be refunded to the petitioner forthwith.

(P. B. Bajanthri, J)

Vikash/-

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

