

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.641 of 2018

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Lalan Kumar Jha Son of Late Kula Nand Jha, Resident of Village and P.O.-
Bhith Bhagwanpur, P.S.- Madhepur, District- Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar, through the Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna
2. The Director, The Directorate of Consolidation, Bihar, Patna.
3. The Consolidation Officer, Bihiya, District- Bhojpur.
4. The Joint Director, Directorate of Consolidation Head Quarter, Bihar, Patna.
5. The Commissioner cum Secretary, Department of Finance Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Thakur, Adv
For the Respondent/s : Mr. Sajid Salim Khan- SC-25

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

Date : 16-09-2022

The writ application has been filed for setting aside the order dated 08.11.2017 passed by the Chakbandi Officer, Bihiya, Bhojpur by which petitioner has been intimated regarding the recovery of an amount of Rs. 4,58,567/- from him. The reason for the said recovery is specified in the communication that the petitioner has availed benefits in a pay scale which is different from the pay scale of Draftsman, on which post the petitioner was working.

2. The excess benefits taken by the petitioner and the details of its calculation have also been communicated by the impugned letter dated 08.11.2017.



3. Learned counsel for the petitioner submits that petitioner was a Grade-III employee. He retired from service on 31.01.2015. The petitioner was in fact entitled to the pay scale of Rs. 4,500/- to 7,000/-. The said pay scale has been granted to the petitioner under decision of the competent authority. The office order issued by the Directorate of Chakbandi dated 31.01.2012 (Annexure-4) also recognises the petitioner's entitlement to the pay scale of Rs. 4,500/- to 7,000/-. In these circumstances, the letter dated 08.11.2017 whereby the petitioner has been noticed about the proposed recovery is clearly unsustainable. It is also submitted that the petitioner is now entitled to grant of benefits under the Assured Career Progression (ACP) Scheme, for which the petitioner had represented and sent reminder to the Director Chakbandi. He has also relied on the decision of the Apex Court in the case of *State of Punjab & Ors. v. Rafiq Masih (white washer) & Ors.* reported in (2015) 4 SCC 334.

4. Learned State counsel however submits that the notice dated 08.11.2017, impugned in the instant writ proceedings, has been served on the petitioner for recovery of excess amount paid to him during his service period. It is clear stand of the State authorities that petitioner was the senior most employee in the Consolidation Office at Bihiya. He has thus



taken charge of all the files/records/documents of the office and assumed the duties of Head-clerk in the Consolidation Office at Bihiya. While he was working as Head-clerk, letters dated 17.05.2012 and 04.09.2013 were sent by the Directorate of Consolidation for adjustment of excess payment of Draftsmen and fixing of their due pay scale as per Finance Department. The said communications were deliberately not acted upon by the petitioner. He sat over these guidelines/directions issued by the Directorate till his retirement. The petitioner, therefore, has facilitated grant and continuance of undue higher pay scale to himself, which is prescribed for category (I)/Senior Draftsman. Since the petitioner is himself responsible for obtaining and retaining the undue pay scale, the impugned notice has been issued to him before effecting recovery of the excess payment taken by him.

5. Mr. Sajid Salim Khan, learned State counsel, has placed reliance on decision of the Apex court in the case of ***High Court of Punjab and Haryana & Ors. v. Jagdev Singh*** reported in **(2016) 14 SCC 267**. The hon'ble apex Court has considered the proposition that recovery which raises a hardship and is in respect of excess payments made mistakenly by the employee, is impermissible as per judgment in the case of ***Rafiq Masih***



(supra). After consideration the apex Court has held that in a situation where the beneficiary was clearly placed on notice that any payment found to have been made in excess would be required to be refunded, the proposition barring recovery may be held to be inapplicable. It is submitted that in the petitioner's case also the letters had been sent to the Directorate of Consolidation for adjustment of excess payment while the petitioner was discharging duties of Head-Clerk. The petitioner did not act on these communications dated 17.05.2012 and 04.09.2013 and thus he was in fact responsible for grant and retention of the undue/excess payment. The recovery, therefore, is in accordance with law.

6. Having considered the rival submissions and perusing the material on record, this Court finds substance in the submission of learned State counsel. There is specific averment in the counter-affidavit regarding the petitioner availing the undue higher pay scale and ignoring the departmental directions/guidelines for adjustment of excess payments, while he was discharging the duties of Head-clerk in the Chakbandi office, Bihiya. Such averments have not been denied or disputed by the petitioner by filing any rejoinder or reply.

7. The irresistible conclusion therefore, is that in the



instant case, the excess/undue pay scale has not been granted mistakenly by the employer. In fact the Directorate of Consolidation had written to the petitioner's office while he was working as Head-Clerk for adjustment of excess payments, but the petitioner has not acted on the communications dated 17.05.2012 and 04.09.2013. In the instant case the petitioner has continued to obtain the benefits of undue/excess pay while he was discharging the duties of Head-clerk. There is no denial that while the petitioner was availing the benefits, guidelines were being issued by the department for adjustment of the excess payment made. There is also no denial that the petitioner did not act as per the departmental guidelines till he retired. The petitioner, therefore, indisputably is responsible for obtaining and retention of the undue high pay scale while in service.

8. Facts being so, the petitioner's case, in so far as recovery is concerned, is factually different from the case of *Rafiq Masih* (supra). The petitioner's case, in the opinion of the Court is covered by decision of the apex Court in the case of *Jagdev Singh* (supra).

9. Insofar as the petitioner's claim for grant of benefits under the ACP scheme, this Court would only observe that the claim for ACP contained in representation and reminder annexed



to the supplementary affidavit remain yet to be considered by the department. This Court, therefore, would not comment on petitioner's entitlement to benefits under ACP Scheme.

10. No case is made out for interfering with the impugned notice for recovery of excess payment contained in the letter dated 08.11.2017.

11. In the case of *Jagdev Singh* (supra), the hon'ble Apex Court has taken into consideration the fact that recoveries should be made in reasonable installments and directed for recovery by way of equated monthly installments in two years, where the amount to be recovered was Rs. 1,22,003/-.

12. In the instant case the amount sought to be recovered is Rs. 4,58,567/-. Therefore this Court would consider it reasonable that recovery be made in equated monthly installments spread over 5 years, but no recoveries whatsoever shall be made from Family Pension.

13. The writ petition is dismissed.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	12.09.2022
Uploading Date	01.10.2022
Transmission Date	NA

