

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1031 of 2018
In
Civil Writ Jurisdiction Case No.18741 of 2015

=====

Arun Kumar Sinha Son of Late Ram Lagan Prasad Sinha resident of Flat No. 305. Surya Laxmi Villa, Ram Jaipal Path, Bailey Road, P.S.- Rupaspur, Town and District- Patna.

... .. Appellant/s

Versus

1. The State Of Bihar through the Treasury Officer, Patna Secretariat, Sichai Bhawan, Patna
2. The High Court of Judicature at Patna through its Registrar General, Patna.
3. The Registrar General, Patna High Court, Patna.
4. The Accountant General (A and E) Bihar, G.E.- 06, Birchand Patel Path, R Block, Patna.
5. The Treasury Officer, Patna Secretariat, Sinchai Bhawan, Patna.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Amit Narayan, Advocate Mr. Brajesh Sahay, Advocate Mr. Abhigyan Kumar, Advocate Mr. Rajiv Kumar, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA 7 Mr. Uday Shankar Pandey, AC to GA 7
For Respondent Nos.2 and 3 :		Mr. Satyabir Bharti, Advocate
For AG	:	Mr. Raj Nandan Prasad, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-08-2022

Heard I.A. No. 5556 of 2018 for condonation of delay.

2. For the reasons stated in the application and affidavit, delay of 280 days in filing L.P.A. stands condoned.

3. The appellant has questioned the decision of the office of the Accountant General dated 15.06.2015 *vide* Annexure - 9 to the



writ petition, it is in respect of recovery of excess payment made to the appellant while he was in service. The learned Single Judge on 17.09.2016 rejected the appellant's C.W.J.C. No. 18741 of 2015. Order of the learned Single Judge reads as under:

“The writ application is dismissed. No interference is warranted with the decision of the Accountant General keeping in mind the principle of law that no government servant can derive any advantage or benefit over and above his entitlement, which is notified.

The discrepancy by some omission committed at the level of the office of the Accountant General allowed the petitioner certain benefits and the same is required to be adjusted. What is required to be adjusted, which the petitioner labels as recovery, in the opinion of the Court, it is nothing but accounting and such accounting and adjustment is required to be made.

Writ application has not merit. It is dismissed.”

4. The learned counsel for the appellant vehemently contended that appellant has attained age of superannuation and retired from service on 30.04.2013 whereas the order of recovery of alleged excess payment made to the appellant is dated 24.07.2013 followed by 15.06.2015 that is rejection of the appellant's representation. The excess payment is stated to have been made during the period from 01.07.2010 to 30.04.2013. The office of the Accountant General have already recovered the determined excess amount of Rs. 78,162/-. In the light of these facts and circumstances, question for consideration is whether



appellant is entitled to refund of sum of Rs. 78,162/- which is stated to have been paid to him in excess with reference to actual payment.

5. Learned counsel for the appellant submitted that insofar as excess payment made by an employer on account of error, in such an event it could not be recovered after retirement and before one year due to retire. In this regard, he has cited decision of the Apex Court in the case of *State of Panjab and Others vs. Rafiq Masih (White Washer) and Others* reported in **2015 (1) PLJR (SC) 261, Para 12.**

6. *Per contra*, learned counsel for the respondent - office of the Accountant General resisted the aforesaid contention and submitted that recovery is in accordance with law. Inadvertently, the appellant has been extended excess payment of Rs. 78,162/- during the intervening period from 01.07.2010 to 30.04.2013. In the light of these facts and circumstances, there is no infirmity in rejecting the appellant's representation and so also there is no infirmity in the order of the learned Single Judge dated 17.09.2016 passed in C.W.J.C. No. 18741 of 2015.

7. Heard learned counsels for the respective parties.

8. Undisputed facts are that appellant was a Joint Registrar-cum-Principal Secretary, Patna High Court. He has been paid



excess amount of Rs. 78,162/- during the intervening period from 01.07.2010 to 30.04.2013 which is sought to be recovered on 24.07.2013. The appellant submitted representation to not to recover and so also requested for refund of already recovered amount and the same was rejected on 15.06.2015 *vide* Annexure -9.

9. The learned Single Judge has not appreciated factual aspects of the case read with the judicial pronouncement, therefore, the appellant has made out a *prima facie* case so as to interfere with the order dated 15.06.2015, Annexure - 9 and order of the learned Single Judge dated 17.09.2016 passed in C.W.J.C. No. 18741 of 2015. In the light of the Apex Court decision cited *supra*, Paragraph No. 12 of the aforesaid Apex Court decision reads as under:

“12. 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.

Underline Supplied



(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.”

10. Paragraph 12 (ii) principle is applicable to the case in hand. Accordingly Annexure 9 to the writ petition and the order of learned Single Judge dated 17.09.2016 passed in C.W.J.C. No. 18741 of 2015 stand quashed. The concerned respondent is hereby directed to refund the already recovered amount of Rs. 78,162/- to the appellant within a period of three months from the date of receipt of this order.

11. Accordingly appeal stands allowed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	23.08.2022
Transmission Date	

