

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10900 of 2022

-
1. Umesh Prasad Singh (Deleted vide order dated 18-08-2022) son of Late Bachchu Singh, resident of Village- Mahmadpur, P.O.-Utrain, Police Station-Tekari in the district of Gaya.
 2. Maruti Sharan Mishra, son of Late Mahavir Prasad Mishra, resident of Village- Head Manpur, Police Station- Buniyadganj in the district of Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Secretary, Expenditure, Finance Department, Government of Bihar, Patna.
4. The Director, Primary Education, Government of Bihar, Patna.
5. The District Magistrate cum Collector, Gaya.
6. The District Education Officer, Gaya.
7. The District Program Officer (Estb.), Gaya.
8. The Treasury Officer, Gaya Treasury, Gaya.
9. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Advocate
For the Respondent/s : Mr. Subhash Chandra Mishra (SC-16)

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 09-11-2022

Heard Mr. Sunil Kumar, learned counsel for the petitioner and Mr. Samir Kumar, AC to SC-16.

2. This order is confined only to the petitioner no.2, as in view of order dated 18.08.2022, passed by this Court, the name of petitioner no.1 (Umesh Prasad Singh) has been deleted from the array of parties.



3. The present writ application has been filed seeking quashing of the Bill showing the excess payment of Rs.7,08,718/- dated 18.06.2022, issued under the signature of the Head Master, Middle School, Khizersarai-cum-Drawing and Disbursing Officer, whereby the alleged aforesaid excess amount has been deducted from the amount of gratuity of the petitioner. The petitioner seeks further direction upon the respondents to refund the amount, which has been deducted from the head of gratuity and further directed to re-fix the pension of the petitioner on the basis of his last pay drawn, as the petitioner superannuated from the post of Assistant Teacher in the pay scale of Rs.72,100/-.

4. The short facts of the case is that the petitioner was appointed as an Assistant Teacher in the year 1991 and was posted in Primary School, Rajbigha under Atri Block in the district of Gaya. In the year 2003, the petitioner was granted Selection Grade Scale in the Pay Scale of Rs.5000-8000/- and thereafter he was also granted promotion to the post of Graduate Trained Teacher on 13.12.2012 fixing his salary after giving one increment as per the Bihar Taken Over Elementary School Teachers' Promotion Rule, 1993.

5. It is the case of the petitioner that the fixation of the salary of the petitioner, on account of Selection Grade and



Graduate Trained Scale, was approved by the Finance Department i.e. District Accounts Officer, Gaya as well as the other respondent authority and since then the petitioner was getting salary regularly and after serving more than 30 years of satisfactory service, he superannuated from the post of Assistant Teacher (Graduate Trained Scale) on 31.01.2022 from Girls Middle School, Uchauli, Khizersarai, Gaya in the pay scale of of Rs.72,100/- (P.B. + G.P.). He further contended that the pension of the petitioner has been fixed vide letter dated 13.05.2022, issued from the office of Accountant General, Bihar, Patna @ Rs.33,000/- after deducting three increments at the pay scale of Rs.66,000/- whereas it should be fixed at Rs.36,050/- on the basis of last pay drawn Rs.72,100/-. He next submitted that the gratuity amount of Rs.13,48,710/- was also sanctioned by the Accountant General, Bihar, Patna. However, Rs.7,08,718/- has been deducted arbitrarily from the aforesaid amount on the pretext of wrong fixation.

6. While concluding his submission, he vehemently submits that recovery of alleged excess paid amount from the gratuity after retirement of the employee is more disadvantageous position when compared to in service employees. Any attempt to recover excess paid amount would cause undue hardship to the employees. Moreover, the petitioner has never been found guilty



of any misrepresentation or fraud in the matter of fixation of his pay scale, which was duly fixed by the respondents after verification of the entire service record. He lastly submits that there is complete violation of principles of natural justice, as neither any notice was served to him nor any opportunity of hearing has been provided before deduction of alleged excess paid amount of Rs.7,08,718/- from the gratuity.

7. A counter affidavit has been filed on behalf of respondent no.5 and submissions have been made on behalf of the learned counsel for the State that on account of erroneous fixation of pay at the time of promotion of the petitioner in the Graduate Trained Scale, excess payment has been made to the petitioner, as the pay fixation award was not admissible to the petitioner in senior/selection scale. He further contended that the Accountant General, Bihar, Patna vide letter dated 01.12.2019 has directed the District Programme Officer (Establishment), Gaya for making necessary correction in the pay fixation of the petitioner in terms of letter no. 5256 dated 17.08.2021 issued by the Finance Department, Government of Bihar and to submit the pension paper. Accordingly, the necessary correction has been made and the same has been forwarded to the Accountant General, Bihar, Patna, basing upon which the authority for pension was issued and



“No Objection Certificate” has also been issued by the District Programme Officer (Establishment), Gaya directing the Treasury Officer, Gaya for recovery of excess amount of Rs.7,08,718/- under the head of gratuity.

8. By referring to the averments made in the counter affidavit, he further submits that the petitioner had submitted his pension paper along with his declaration that, in case, any amount is found paid excess to the admissible amount, the same shall be returned by the petitioner. Since the fact of erroneous fixation is detected at later stage, the same is liable to be recovered for the reason that the public money is involved and if an employee has been paid in excess to his entitlement due to mistake or wrong calculation/wrong fixation of pay or wrong award of increments or for analogous reason, the recovery cannot be denied on the ground that there is no fraud or misrepresentation on the part of the concerned employee. Having assertively relying upon the Apex Court’s judgment rendered in the case of **High Court of Punjab & Haryana vs Jagdev Singh**, reported in **2016 (4) PLJR SC 78**, he submits that the officer furnished an undertaking while opting for the revised pay scale, he is bound by the undertaking.

9. Before coming to the final conclusion, it would be apt and proper to observe that it is true that the distinction between



Judicial Act and Administrative Act has withered away and the principles of natural justice are now applied even to administrative orders which involve the civil consequences, as held by the Hon'ble Supreme Court in the case of **State of Orissa vs Dr. (Miss) Binapani Dei & Ors**, since reported in **1967 SCR (2) 625**. What is a civil consequence has been answered by the Hon'ble Supreme Court in the case of **Mohinder Singh Gill & Anr Vs. The Chief Election Commissioner, New Delhi & Ors.**, reported in **(1978) 3 SCR 272** wherein Krishna Iyer, J. speaking for the Constitution Bench observed:

“But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights out of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.”

10. The question is whether the principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory



provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. Reliance may be taken of the judgment rendered by the Hon'ble Supreme Court in the case of **Union of India & Ors vs E.G. Nambudiri**, reported in **AIR 1991 SC 1216**.

11. From the aforesaid settled legal proposition, it is manifestly clear that even an administrative order, which involves civil consequences, has to be passed consistently with the rule of natural justice.

12. Now it is also evident from the record that this is not the case of the respondents that the fixation was made on account of any misrepresentation or fraud on the part of the petitioner and he had any knowledge that any amount was being paid to him was more than what he was entitled to. Moreover, even if, the case of the respondent is accepted, the alleged excess payment made to the petitioner was result of improper fixation by the concerned respondents itself, pursuant to the direction of the Primary Education Department, Government of Bihar and, as such, the petitioner cannot be held to be responsible.



13. For proper appreciation of the issue in question, it would be apt and proper to quote para 27 and 28 of the judgment rendered by the Hon'ble Supreme Court in the case of **Syed Abdul Qadir Vs. The State of Bihar & Ors**, reported in **(2009) 3 SCC 475**.

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 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 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.”

14. Further, the Hon’ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih (White Washer),**



reported in **(2015) 4 SCC 334** dealing with the similar issue relating to recovery of amount paid in excess without fault of recipient, after his superannuation, has been pleased to hold that “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 concerned employee. If the effect of the recovery from the concerned employee 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.”

15. The Hon'ble Supreme while parting with the judgment has been pleased to postulate certain situations of hardship wherein recovery by the employees would be impermissible in law. For the proper appreciation, para. 18 whereof is quoted herein below:



“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.”

Emphasis supplied.



16. From the aforesaid judgments rendered by the Hon'ble Supreme Court one thing, which is evident that any excess amount paid to an employee not on account of any misrepresentation or fraud on his part or the employee had no knowledge that the payment received was in excess to that what was due or wrongly paid, and when the excess payment has been made for a pretty long time of more than five years, before the order of recovery is issued and if the employee is already superannuated, the same is not permissible in law.

17. So far the reliance of the State respondents on the judgment rendered by the Apex Court in the case of **High Court of Punjab & Haryana Vs. Jagdev Singh** (supra) is concerned, in my view, the proposition enunciated by the Apex Court holding, inter alia, that the officer furnished an undertaking while opting for the revised pay scale, is bound by the undertaking, would not be applicable in the facts of the present case. It is needless to say that fixation of pay in Graduate Trained Teachers' scale was done way back in the year 2012 itself and he had never been placed on notice that any payment found to have been made in excess would be recovered. Now any such kind of notice or undertaking after the retirement of the employee would not come to rescue of the



employer to get all the mistake/error committed by them, rectified at the fag end or after the superannuation of the employee.

18. In view of the aforesaid settled proposition of law and the discussions made hereinabove, this Court finds the impugned action and order of recovery is wholly unjustified, improper and not sustainable in the eye of law as well as on facts. Accordingly, the ‘Bill showing’ recovery of excess payment of Rs.7,08,718/- is hereby set aside and the State respondents are directed to refund the deducted amount to the petitioner forthwith.

19. The writ application stands allowed. There shall be no order as to costs.

(Harish Kumar, J)

uday/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.11.2022
Transmission Date	NA

