

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16138 of 2018

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Deo Prakash Son of Awadhesh, Resident of Village- Amarpura, P.S.-
Naubatpur, District- Patna at present posted as Block Horticulture Officer,
Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Agriculture Department, Bihar, Patna.
3. The Agriculture Production Commissioner, Bihar, Patna.
4. The Additional Agriculture Commissioner-cum-Director Agriculture, Govt.
of Bihar, Patna.
5. The Director Horticulture, Horticulture Directorate Agriculture Dept., Bihar,
Patna.
6. The Deputy Director, Horticulture, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sharda Nand Mishra
For the Respondent/s	:	Mr. Raghwanand, GA-11
		Mr. Sanjay Kr. Tiwari, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

5 13-07-2022 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner is aggrieved by the office order dated
27.06.2018 whereby the petitioner's scale of pay which was
granted under earlier office order dated 24.04.2015 as Rs. 9300-
34800/- has been modified/reduced to Rs. 5200-20200/- in the
grade pay Rs. 2800/-.

It is submitted by the petitioner's counsel that such
modification which has effect of reducing the pay and
consequent recovery without any notice or without complying



principles of natural justice is unsustainable. It is submitted that it was not based on any misrepresentation by the petitioner and, therefore, is unsustainable.

The counsel for the State has referred to decision of the Apex court in the case of **High Court of Punjab & Haryana v. Jagdev Singh**, reported in (2016) 14 SCC 267. It is submitted that the order dated 24.04.2015 granting the scale of Rs. 9300-34800/- grade pay Rs. 4200/- was containing a clear stipulation that in case the said grant was found to be in any way erroneous, then the same would be rectified. By the office order impugned in the instant writ proceedings, the authorities have only rectified their mistake for which they had retained their right by putting the petitioner to notice of such corrections. Petitioner therefore cannot claim any indefeasible right for continuing to avail an erroneous scale. Issue raised regarding the order being without complying with the principles of natural justice, is baseless.

This Court would find that petitioner has not stated that he is entitled to the scale which was granted under office order dated 24.04.2015. No legitimate claim has been placed on the scale granted by Annexure-2. Withdrawal by Annexure-3, is in exercise of the option which was retained by the authorities



under due notice to the petitioner in the same order dated 24.04.2015 whereby the undue benefit had been granted to the petitioner.

The petitioner is still in service and the correction has been made within a reasonable time. This Court is, therefore, inclined to accept the submission of the State counsel based on decision in the case of *Jagdev Singh* (supra) which has taken into consideration the earlier decision of the Apex Court in the case of *State of Punjab v. Rafiq Masih*, reported in (2015) 4 SCC 334 and has allowed recovery under similar circumstances.

The writ application is devoid of merit and is accordingly dismissed.

(Madhuresh Prasad, J)

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