

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.209 of 2023

1. Nagendra Kumar Singh Son of Late Ramsundar Singh, Resident of Village- Narouli, Karauta, Police Station- Bakhtiyarpur, District- Patna, Bihar, presently posted as Hawaldar
2. Md. Sartaj Khan Son of Md. Rafik Khan, Resident of Village- Bara, near old Post Office, West Side, Police Station- Dildarnagar, District - Ghazipur, Uttarpradesh, presently posted as D.P.C./176

... .. Petitioners

Versus

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

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Prashant Kumar, Advocate
For the Respondent/s : Mr. Dhurandra Kumar, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 25-02-2023 Heard learned counsel for the petitioners and learned counsel for the State.

Petitioners, in the present case, are seeking the following reliefs:-

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



State Government issued vide Memo No. 9615 dated 12.11.2018 (Annexure – 2) (to the extent it is applicable to the Petitioners) whereby the Grade Pay and all consequential benefits including ACP to the Petitioners was retrospectively revised without notice or opportunity of hearing with a direction for recovery/deduction of the purported excess amount from the respective salaries paid to the Petitioners pursuant to the resolution as contained in Annexure -1 which is discriminative, arbitrary and retrospective in nature and in violation of the principles of natural justice and fairness.

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. 1174/2019 issued vide Memo No. 3100 dated 20.11.2019 (Annexure – 3) (to the extent it is applicable to the Petitioner) in compliance of the State Government Resolution No. Memo No. 9615 dated 12.11.2018 (Annexure – 2) pursuant to which the Grade Pay and all consequential benefits including ACP to the Petitioners was retrospectively revised without notice or opportunity of hearing with a direction for recovery/deduction of the purported excess amount from the respective salaries paid to the Petitioners.

iii.) For issuance of appropriate writ, order or direction in the nature of Mandamus thereby directing the Respondent authorities for reversion of the grade pay and all consequential benefits of the Petitioners at the rate effective prior to the issuance of Memo No. 9615 dated 12.11.2018 (Annexure – 2) and refund of deductions thus made from the monthly salary of the Petitioners.

iv.) For issuance of appropriate writ, order or direction 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), Crime Investigation Department Order No. 1174/2019



issued vide Memo No. 3100 dated 20.11.2019 (Annexure – 3), during the pendency of the present writ application before this Hon'ble Court.

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

Learned counsel for the petitioners submits that these petitioners were initially appointed on the post of Constables having the minimum educational qualification of 7th standard. Till the year 1981, the grade pay for such appointees was fixed at Rs. 2400, Rs.4200 and Rs.4600 respectively for Hawaldar, Civil Jamadar and Subedar category. The petitioners were promoted to Civil Jamadar and they were getting their salary in the grade pay of Rs.4200/-.

It is stated that in the year 1996, the minimum qualification for selection to the post of Constables was revised to 10th standard/Matriculation and in the year 2013, it was revised to Intermediate/12th standard with career progression as Assistant Sub-Inspector (ASI)–Sub-Inspector (SI) and Inspector. Initially, the career progression of the Constables having minimum qualification of 7th pass was Constable – Hawaldar – Civil Jamadar – Subedar but subsequent to revision, the grade pay of the 7th pass Constables appointed after the year 1981 has been retrospectively revised at Rs.2400, Rs.2800 and Rs.4200 consequently affecting their first, second and third ACP benefits



as well. It is stated that the salary of the present petitioners was, therefore, retrospectively revised based on revised grade pay of Rs.2800 (which is equivalent to S.I.) in place of Rs.4200. The grievance of the petitioners is that their notional position as Civil Jamadar having a grade pay of Rs. 4200/- was equivalent to that of Sub-Inspector which has been arbitrarily revised and reduced their grade pay to Rs. 2800. which is given to ASI, a position which is junior to the petitioners.

Mr. Prashant Kumar, learned counsel for the petitioners submits that vide Memo No. 3100 dated 20.11.2019 issued under signature of the Superintendent of Police (C), Crime Investigation Department, Government of Bihar as contained in Annexure '3' to the writ application, a decision has been taken to carry on an exercise towards correction in the matter of grade pay w.e.f. 01.01.2006 and it has been decided to pay the difference amount of the grade pay w.e.f. 21.01.2010. It is submitted that as a result of this exercise, the petitioners who have received the benefit of the ACP/MACP in higher grade pay are being subjected to recovery of excess amount but neither before carrying on the exercise as contained in Annexure '3' to the writ application nor thereafter in the matter of recovery from the petitioners, any notice to show-cause has been issued to the



petitioners. It is categorically stated in paragraph '23' of the writ application that no show-cause notice or an opportunity of hearing has been given to the petitioners before adverting to the order of recovery of the so-called excess amount from the salary of the petitioners.

Learned counsel submits that case of the petitioners are covered by the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others** reported in **(2015) 4 SCC 334**. Reference has been made to paragraph '18' of the said judgment wherein five categories of cases have been mentioned as such cases wherein recoveries by the employers would be impermissible.

Learned counsel further submits that earlier a learned Co-ordinate Bench of this Court has, upon finding that the principle of natural justice has not been complied with, disposed of CWJC No. 10220 of 2021 and CWJC No. 4864 of 2021 vide orders contained in Annexure '5' to the writ application. The operative part of the order of the learned Writ Court reads as under:-

“In the light of these facts and circumstances, order dated 12.11.2018 (Annexure-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....”

It is further pointed out that following the said judgment of the learned Co-ordinate Bench, this Court has also disposed of CWJC No. 155 of 2023 vide order dated 21.02.2023. The operative part of the order of this Court in CWJC No. 155 of 2023 reads as under:-

“In the aforesaid view of the matter, this writ application is being disposed of with a direction to the Additional Chief Secretary, Department of Home (Police), Government of Bihar (respondent no.2) to examine the case of the petitioners keeping in view the orders passed by this Court in CWJC No.10220 of 2021 and CWJC No.4864 of 2021. In case it is found that these petitioners are similarly situated to the petitioners of the said two cases, it goes without saying that the petitioners would also be entitled for similar reliefs and there would be no recovery from them. The respondents would, however, be at liberty to take steps for re-fixation of pay/ACP after giving an appropriate opportunity of hearing to the petitioners.

Let such decision be taken within a period of three months from the date of receipt/communication of a copy of this order. No deduction shall be made in the meantime.”

Learned counsel has further relied upon a recent judgment of the Hon’ble Supreme Court in the case of **Thomas**



Daniel Vs. State of Kerala and Ors. reported in **2022 SCC Online SC 536** to submit that in the said case, not only the propositions laid down by the Hon'ble Supreme Court in the case of **Rafiq Masih (White Washer)** (Supra) has been followed but has also been held that recovery of the excess amount of increment paid to the employees after ten years would cause hardship to them.

Learned counsel for the State has though opposed this writ application but it is not disputed that in case of these petitioners also no notice to show-cause/opportunity of hearing has been given to the petitioners before effecting the recovery in the light of Annexure '3' to the writ application.

Having regard to the facts and circumstances and the materials available on the record, this Court finds that the present case would also be covered by the order dated 21.02.2023 passed in CWJC No. 155 of 2023.

This writ application is, thus, disposed of in similar terms.

(Rajeev Ranjan Prasad, J)

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