

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2129 of 2023

Paras Nath Sharma, S/o Late Mathura Mistri, R/o Mohalla- Near Hanuman Mandir (On Railway Gumti) Raghapur, P.S. - Bakhtiyarpur, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Sec. Education Department, Patna.
2. The Dist. Program Officer, (Establishment) Patna
3. The D.E.O. Patna
4. The Principal Accountant General (A and E), Patna

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar, Advocate
For the A.G.	:	Mr. Ram Kinker Choubey, S.C (A&AD)
For the Respondent/s	:	Mr. Jitendra Kr. Roy 1, SC-13

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 10-08-2023

Heard Mr. Manoj Kumar, learned counsel
appearing on behalf of the petitioner; Mr. Ram Kinker Choubey,
learned counsel appearing on behalf of the Accountant General
Bihar and Mr. Jitendra Kumar Roy, learned SC-13 for the State.

2. In the present writ petition the petitioner has
prayed for following relief:

**“1. That the present writ petition is being
filed for issuance of appropriate
writ/writs, order/orders, direction/
directions to the Respondent no.-1-4 to
pay the retrial dues of the petitioner which
has not been paid to the petitioner
however the petitioner has retired on
28.02.2022 from the post of Headmaster
from Ganesh Kanya Middle School,
Bakhtiyarpur, Patna. And i.G.P.F ii. G.I.C**



have been paid iii. But Leave Encashment (22 days Leave Encashment have not paid), Pension has also not paid to petitioner, when the petitioner was in service the department has paid the scale of 72100/- who are in service and after retirement the salary of the petitioner has been deducted and fixed at the scale of Rs.70,000/-and no reason has been given why the scale of the petitioner has been deducted after retirement from 72100/- to 70,000/-. There is monetary loss of the petitioner in pension so the pension should be fixed on the basis of last pay, as per the above fact Your Lordship may pass appropriate order according to law after filing the application by the petitioner before the authority, grievance of the petitioner is to pass the order in the light of order passed in writ petition vide CWJC No. 12701/2022 on 06.12.2022 by Hon'ble Justice Harish Kumar.”

3. Learned counsel appearing on behalf of the petitioner submitted that no recovery can be made on account of having not passed the Hindi Noting & Drafting Examination. The petitioner was given financial upgradation as petitioner was posted on the post of Headmaster and due to his stagnation on the said post. He further submitted that law is well settled in case of *Amresh Kumar Singh & Ors. vs. The State of Bihar & Ors.* reported in (2023) SCC OnLine SC 496 in which case recovery has been held to be illegal and the petitioner was



Headmaster, which is a Class-III post and his case is also covered by the law laid down by the Hon'ble Apex Court in the case of *State of Punjab and Others vs. Rafiq Masih (White Washer)* reported in *(2015) 4 SCC 334* and *Sahib Ram Vs. State of Haryana & Others* reported in *1999 Supp (1) SCC 18*. Learned counsel further submits that in case of *Amresh Kumar Singh & Ors. (Supra)*, the Apex Court has made it clear that any financial upgradation will not amount to promotion and as such the recovery, which has been made from the pensionary benefit of the petitioner is against the settled law.

4. Learned counsel appearing on behalf of the State submits that the petitioner is entitled for return of the amount which has been recovered from the pensionary benefit. However, the petitioner is not entitled for fixation of pension on the basis of incorrect calculation.

5. Considering the aforesaid submission made on behalf of the rival parties, the petitioner is directed to file a detailed representation for claiming the applicable pension in his case and he may rely upon the law laid down by the Hon'ble Apex Court in this regard. The District Programme Officer (Establishment), Patna is directed to pass a reasoned order taking into consideration the order passed in case of **Naresh**



Prasad Sharma Vs. The State of Bihar and Others (C.W.J.C. No. 16001 of 2021) and the law laid down by the Apex Court in the case of *State of Punjab and Others vs. Rafiq Masih (White Washer)* reported in *(2015) 4 SCC 334*; *Thomas Deniel Vs. State of Kerala & Ors.* reported in *2022 LiveLaw (SC) 438*, and recently in case of *Amresh Kumar Singh & Ors. vs. The State of Bihar & Ors.* reported in *(2023) SCC OnLine SC 496* after giving proper opportunity to the petitioner within a period of six weeks. If the petitioner is found to be entitled for his claim, as claimed in the present writ petition or in the representation, the same may be given to the petitioner along with statutory interest on account of any delay in payment, not beyond period of six weeks.

6. With the above observations and directions, the present writ petition stands disposed of.

(Purnendu Singh, J)

manish/mini

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.08.2023
Transmission Date	

