

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25094 of 2018

=====

Lalan Prasad, son of Late Bharat Sah Resident of Village- Gonahi, Police Station- Sathi, District - West Champaran Bettiah.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. The Director, Primary Education, Department, Bihar, Patna.
3. The District Education Officer, West Champaran, Bettiah.
4. The District Programme Officer, West Champaran, Bettiah.
5. The Drawing and Disturbing Officer, Lauria, West Champaran, Bettiah.
6. The District Treasury Officer, West Champaran , Bettiah.
7. The Accountant General, Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Md. Harun Quareshi, Advocate.
For the State	:	Mr.Madanjeet Kumar, GP-20.
For the Accountant General:		Mr. Raj Nandan Prasad, Advocate.
		Mr. Vishesh Kumar Singh, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 11-04-2023 Heard Mr. Md. Harun Quareshi, learned counsel appearing on behalf of the petitioner; Mr. Mandanjeet Kumar, learned GP-20 for the State and Mr. Raj Nandan Prasad, learned counsel assisted by Mr. Vishesh Kumar Singh, learned counsel for the Accountant General.

2. In the present writ petition, petitioner has sought quashing of the order dated 31.08.2016 by which the respondent no.7 has recovered an amount of Rs.1,02,964/- from the gratuity of the petitioner. The petitioner who joined on 09.08.1976 as an



Assistant Teacher has retired on 31.07.2016 as Assistant Teacher. The Accountant General – Respondent no.7 ordered to recover 3% excess increment which was given to the petitioner at the time of his pay fixation on promotion. Pursuant to the aforesaid direction of the Accountant General for recovery of excess 3% increment, District Programme Officer (Establishment), West Champaran vide Memo No. 426 dated 07.02.2019 had issued a show cause to the petitioner. The petitioner replied to the show cause on 13.02.2019 and in the show cause he admitted that additional 3% increment has been received by him.

3. Learned counsel appearing on behalf of the petitioner submitted that though the respondent no.7 has recovered the additional 3% increment given to the petitioner at the time of his promotion, but the fault is on their part that 3% additional increment has been received by the petitioner. The amount was recovered within a very short period of time. The same cannot be recovered from the petitioner after his retirement as it would be evident from the show cause contained in Memo No. 426 dated 07.02.2019.

4. Learned counsel appearing on behalf of the respondent submitted that the promotion was granted to the



petitioner in general grade pay under the same pay band of Graduate Trained Teacher vide Letter No. 3224 dated 31.12.2010 and at the same time he was given 3% additional increment vide Memo No. 1158 dated 07.09.2015 which is against the Circular of the Finance Department.

5. Heard the parties.

6. 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.

7. Attention is drawn to Clause 12 of the Finance Department Resolution as contained in Memo No. 3 ए-2 वे.पु.-16/09-630, dated 21st January, 2020 which was adopted by the State Government and was made effective from 01.01.2006. The relevant Clause 12 of the said Resolution is reproduced hereinafter:-

“12. Fixation of Pay on promotion on



or after 01.01.06: In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows:-

One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing **pay in the pay band** (as defined in para 4(v)). The grade pay corresponding to the promotion post will thereafter be granted in the pay band also, the same methodology will be followed. However, if the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped to such minimum.

Note: On promotion from one grade to another/financial up gradation under ACP, a Government servant has an option under FR22(1)(a) (1) to get his pay fixed in the higher post either from “the date of his promotion, or from date of his next increment, viz 1st July of the year. The pay will be fixed in the following manner in the revised pay structure:-

(a) In case the Government servant opts to get his pay fixed from his date of next increment, then, on the date of promotion, pay in the pay band shall continue unchanged, but the grade pay of the higher post will be granted. Further re-fixation will be done on the date of his next increment i.e. 1st July. On that day, he will be granted two increments one annual increment and the second on account of promotion. While computing these two increments, basic pay, prior to the date of promotion shall be taken into account. To illustrate, if the basic pay prior to the date of promotion was Rs. 100, first increment would be computed on Rs. 100 and the second on Rs. 103.

(b) In case the Government servant opts to get his pay fixed in the higher grade from the date of his promotion, he shall get his first increment in the higher grade on the next 1st July if he was promoted between 2nd July and 1st January. However, if he was promoted between 2nd January and 30th June of a particular year he shall get his increment on 1st July of next year.”

8. It is not the case of the petitioner that he has been promoted from one grade pay to the other. From bare perusal of



Clause 12 of Annexure 3, which is a resolution dated 21.01.2020 of the Finance Department, Government of Bihar, it is apparent that 3 % increment was to be given only in case of promotion from one grade pay to the other, which is not the case here.

9. The decision of recovery was taken within a short span of time within one month from the date of retirement of the petitioner, i.e., 31.07.2016.

10. The position has been examined by the Apex Court in the case of **Chandi Prasad Uniyal Vs. State of Uttarakhand reported in (2012) 8 SCC 417**. The law is found stated by the Apex Court, as stated in Paragraph-14, which is quoted hereunder:

“14. We are concerned with the excess payment of public money which is often described as “taxpayers' money” which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are



being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”

11. Considering the submissions advanced on behalf of the parties and on perusal of the documents relied upon, this Court finds that the petitioner claims that he has been promoted in general grade pay under the same pay band of Graduate Trained Teacher. Petitioner does not claim that he has been promoted from one grade pay to the other. That being a pre-requisite, for grant of 3% increment in terms of Clause 12 of Resolution dated 21.01.2010, the petitioner is not in a position to claim the said increment.

12. Writ petition is accordingly dismissed.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	17.04.2023
Transmission Date	N.A.

