IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4397 of 2023

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Sanjay Kumar Suman Son of Late Rajendra Sharma Resident of Ghurdaur Chauk, Rajeev Nagar, Phulwari, District-Patna, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Home Secretary (Police), Bihar, Patna.
2. The Special Secretary, Home Department (Special Branch), Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Addl.Director General of Police, Special Branch, Bihar, Patna.
5. The Secretary, Department of Finance, Bihar, Patna.
6. The Under Secretary, Department of Finance, Bihar, Patna.
7. The Secretary, Human Rights Commission, Bihar, Patna.
8. The Deputy Secretary, Human Rights Commisson, Bihar, Patna.
9. The Deputy Inspector General of Police, (Personnel), Bihar, Patna.
10. The Superintendent of Police (A), Special Brach, Bihar,Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siya Ram Sahi, Sr. Advocate
		Mr. Binod Kumar, Advocate
For the Respondent/s	:	Mr. M. Nasrul Huda Khan (SC 1)

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 27-07-2023

Heard Mr. Siya Ram Sahi, learned Senior Counsel assisted by Mr. Binod Kumar, learned counsel appearing on behalf of the petitioner and Mr. M. Nasrul Huda Khan, learned SC-1 for the respondent/s.

2. Petitioner is aggrieved by the order contained in Memo No. 21074 dated 30.12.2022, which has been passed

after his retirement. The date of retirement of the petitioner is 28.02.2022. As a consequence of the order dated 30.12.2022, the petitioner was directed to deposit the interest accrued on account of illegal disciplinary proceeding initiated against him which concluded into the compulsory retirement of the petitioner.

3. The dates would be relevant in this regard to decide as to whether the authorities are entitled to demand interest from any amount which has been held to be finally illegal on account of the proceeding initiated against the petitioner during his service period imposing penalty of compulsory retirement. The relevant dates are as under:

"The petitioner was suspended on 06.02.2014. Penalty order imposing penalty of compulsory retirement was passed on 26.05.2014. Against the said order, the petitioner had preferred appeal which was dismissed on 10.06.2015. Thereafter the petitioner had preferred CWJC No. 485 of 2016 which was allowed vide order dated 01.11.2017."

4. The operative part of the order dated 01.11.2017 passed in CWJC No. 485 of 2016 *inter alia* is reproduced hereunder:

"Having heard learned counsel for the parties & taking note of the multiple statutory

violations accompanying the proceedings under challenge, it would not detain this Court to hold that the entire proceeding leading to the impugned order(s) is a sham as observed by me at the outset for it has been held de hors the mandatory procedure underlying Rule 17 and 18 of 'the Rules'. The entire disciplinary proceeding including the orders impugned resting on such illegal proceedings are perpetuation of illegality and in consequence the entire proceedings inclusive of the enquiry report, the second show cause notice, the order of the disciplinary authority dated 23.06.2014 at Annexure-1 together with the order of the appellate authority dated 10.06.2015 at Annexure-2 are quashed and set aside. The petitioner is restored to his post and shall be entitled to all consequential benefits which should be provided to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

Since charges have been drawn in tune with Rule 17(3) of 'the rules' and no infirmity is found in this exercise, it shall be open to the disciplinary authority if so advised, to proceed in the matter afresh from the stage of service of charge memo and for disposal of the matter in accordance with law.

The writ petition is allowed.

Let the records of the proceeding be returned to Mr. Amit Bhushan learned State counsel to his custody."

5. In the departmental proceedings conducted against the petitioner, he was found 'Not Guilty' and by order contained in Memo No.1016 dated 03.02.2019, it was decided that after revoking the petitioner's suspension from date of its order entire amount of dues of remaining salaries would be paid to the petitioner from 06.02.2014. The petitioner had filed

CWJC No.485 of 2016 wherein by order dated 01.11.2017 (Annexure 2), the order of the disciplinary authority dated 23.06.2014 together with the order of the appellate authority dated 10.06.2015 were quashed and set aside and directions were issued to respondent authorities to restore the petitioner upon his earlier post with all consequential benefits. Although the petitioner was reinstated in service but the order of giving consequential benefits arising thereafter was not properly complied with therefore a contempt application bearing MJC No.975 of 2018 was filed before this Hon'ble Court.

6. On the examination of records of the present writ petition it appears that a departmental proceeding was initiated against the petitioner which ended in punishment order of Compulsory retirement contained in Memo No. 1168 dated 26.05.2014, which was upheld in appellate order and communicated vide Letter No.729 dated 10.06.2015 (Annexure 1 Series). By Memo No.3379 dated 23.06.2014 of the Deputy Inspector General, Munger Range, Munger, the petitioner has been compulsorily retired from service in public interest. This was confirmed by Director General of Superintendent of Police, Begusarai in his letter dated 14.03.2014 to the Deputy Inspector General Police, Munger Range, Munger, stating therein that he

had a different opinion to direct the Superintendent of Police, Begusarai to hold a departmental proceeding as in the opinion of the disciplinary authority, the petitioner appeared guilty of the charges which form the complaint.

7. The petitioner retired in February, 2022 from service but was not paid anything towards the retirement benefits except amount of GPF. The Superintendent of Police, (A) Special Branch, Patna issued Letter no. 4047 dated 09.12.2022 addressing to the Deputy Secretary, Human Rights Commission, Patna regarding payment of retirement benefits of petitioner after the recovery of interest amount (Annexure 5). After petitioner's retirement, the Deputy Secretary of Bihar Human Rights Commission issued consequent letter dated 30.12.2022 contained in Memo No. 21074 addressing to the special branch by giving the reference of consent of Finance Department that the retirement benefits will be paid to petitioner after recovery of interest amount (Annexure 6).

8. This Court finds that there has been glaring disregard to the established rules and procedures by the respondent authorities. The disciplinary action initiated against the petitioner was found to be illegal and final order dated 03.02.2019 was passed by the Disciplinary Authority after

passing of the order dated 01.11.2017 in CWJC No. 485 of 2016. The respondents vide Memo No. 1016 dated 03.02.2019 took decision to grant entire amount of dues salary from 06.02.2014. The recovery of any amount of interest from the pension and pensionary benefit is illegal and the impugned order contained in Letter No. 4047 dated 09.12.2022 (Annexure-5) and Memo No. 21074 dated 30.12.2022 (Annexure-6) is set aside and quashed in light of settled principle of law laid down by the Apex Court.

9. The Hon'ble Supreme Court in the case of ***Sahib Ram v. State of Haryana and Others*** reported in ***1999 Supp (1) SCC 18*** has restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order by the authority concerned, without any misrepresentation on part of the employees by making following observations:

> *"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount*

paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

10. In ***Col. B.J. Akkara (Retd.) v. Government of India and Others*** reported in ***(2006) 11 SCC 709***, the Supreme Court held as under:

"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/ understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma V. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and V.Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]): (a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee. (b) 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.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he *receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.*

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made."

11. In ***Syed Abdul Qadir and Others v. State of Bihar and Others*** reported in ***(2009) 3 SCC 475*** excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong

interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Hon'ble Supreme Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The Court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/ understanding of a Rule or Order. It was held thus:

> *"59. Undoubtedly, the excess amount that has been paid to the appellant 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 there 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 appellant 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 appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

12. In the decision in ***State of Punjab & Others vs. Rafiq Masih (White Washer) and anr.*** Reported in ***[(2015) 4 SCC 334]***, the Hon'ble Supreme Court has dealt with the issue of right of employer to recover the amount paid in excess to the employee without any fault of employee. The Supreme Court in paragraph no. 18 of its judgment has held as under:-

"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 hereinabove, 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 the 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."

13. The Hon'ble Supreme Court in the case of *Rafiq Masih (Supra)* has summarized some of the situation wherein the recovery by the employer would be impermissible in law. While enumerating the situations, the Apex Court has also mentioned in paragraph no. 18 of the judgment that it is not possible to postulate all situations of hardships which would govern the employee on the issue of recovery where the payments have mistakenly been made by the employer in absence of their entitlement. There may be various other situation which may create hardship to the employee on the issue of recovery.

14. As the amount on account of interest determined by the respondents have not been recovered till date, the respondents are directed not to recover any amount from the

pensionary benefits of the petitioner. The respondents are directed to release all the retiral benefits including pension of the petitioner along with the statutory interest on account of delay in making payment of retiral dues under different heads till the date of payment forthwith.

15. With aforesaid observation and direction, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R
CAV DATE	N/A
Uploading Date	17.8.2023
Transmission Date	N/A