

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16175 of 2014

=====

Dilip Kumar Sinha son of Late Bibhuti Bhushan Sinha, resident of
Bikramshila Colony, near Girls High School, P.O. and P.S. Tilkamanjhi,
District- Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Rural Development Department, Govt.
of Bihar, Patna.
2. District Development Commissioner, Bhagalpur

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Shrinandan Pd. Singh, Sr. Adv. Mr.Kumar Sameer, Adv. Mr.Ranaveer Prawar, Adv.
For the Respondent/s	:	Mr.Prem Ranjan Raj, AC to SC-7

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 20-07-2023

1. The present writ petition has been filed for quashing the letter dated 28.03.2014, issued by the District Development Commissioner, Bhagalpur, i.e., respondent no.2, whereby and whereunder, it has been held that since vide departmental letter dated 05.02.2014, it has been clarified that the employees of the District Rural Development Authority (hereinafter referred to as “DRDA”), Bhagalpur, are not entitled to the benefits of A.C.P./M.A.C.P., the amount paid to the petitioner in pursuance to the grant of benefits of A.C.P./M.A.C.P., totalling to a sum of Rs.5,66,038/- is



required to be recovered from the petitioner, whereupon some recovery has also been made from the petitioner and for the balance amount, the petitioner has been directed to deposit the same in the office. The petitioner has also prayed to refund the amount of Leave Encashment, alongwith interest at the rate of 10 % per annum.

2. The brief facts of the case are that the petitioner joined Government service as a Stenographer on 05.03.1976, in the office of the District Rural Development Authority (DRDA), Bhagalpur, whereafter he was given time bound promotion on 05.05.1986, and then the benefits of Assured Career Progression (A.C.P.) scheme on 30.06.2009. It is further submitted by the learned senior counsel for the petitioner that in the meeting of the Managing Committee of DRDA, Bhagalpur, held on 18.11.2011, recommendations were made for implementation of the A.C.P. scheme with regard to the employees of DRDA, Bhagalpur, whereafter the petitioner was again granted the benefits of A.C.P. on 09.12.2011, however in between, the aforesaid benefits of A.C.P. granted to the employees of DRDA, Bhagalpur, was withdrawn vide letter dated 25.02.2012, however, it was again decided to implement the scheme of A.C.P. with regard to the



employees of DRDA, Bhagalpur in the meeting of the governing body held on 30.06.2012. Thereafter, the petitioner is stated to have retired on 28.02.2013, and then the Special Officer of the Rural Development Department, Government of Bihar, Patna, vide letter dated 05.02.2014, had communicated to all the District Development Commissioners of the State of Bihar, informing them that the A.C.P. scheme is only applicable in the case of Government officials and regular employees, but is not applicable to the employees of DRDA, Bhagalpur. It is further submitted that it is a well settled law that recovery from a retired employee is impermissible in law, hence the impugned orders are fit to be set aside.

3. Per contra, the learned counsel appearing for the DRDA, Bhagalpur has submitted by referring to the counter affidavit, filed in the present case that DRDA, Bhagalpur is an independent body, constituted by the Government under the Managing Committee of DRDA, Bhagalpur. It is also submitted that the petitioner, by suppressing the actual facts had managed to receive the benefits of A.C.P. scheme, applicable to the State Government employees, whereas the fact is that the employees of DRDA, Bhagalpur, are not entitled to get the benefits of the A.C.P.



scheme. It is also submitted that the petitioner has succeeded in concealing Clause 9 of the minutes of the meeting dated 30.06.2009, organized by the Managing Committee of the DRDA, Bhagalpur, inasmuch as though it had been decided to extend the benefits of A.C.P. scheme to the employees of DRDA, Bhagalpur, however upon receipt of approval from the State Government. Thus, it is submitted that the benefits of the A.C.P. scheme granted illegally to the petitioner is required to be recovered from the petitioner and that is why the impugned order dated 28.03.2014, has been issued quantifying and directing for recovery of a sum of Rs.5,66,038/- from the petitioner.

4. At this juncture, the learned senior counsel for the petitioner has submitted that though the aforesaid minutes of meeting, containing Agendas, has been signed by the Chairman, DRDA, Bhagalpur on 31.09.2009 as also by the District Development Commissioner, Bhagalpur on 31.08.2009, but the benefits of the A.C.P. scheme had already been granted to the petitioner and the other employees of DRDA, Bhagalpur on 30.06.2009 and thereafter vide memo dated 09.12.2011, hence admittedly, there has been no misrepresentation on the part of the petitioner as far as grant



of the benefits of A.C.P is concerned. In this regard, the learned senior counsel for the petitioner has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***State of Punjab and Others vs. Rafiq Masih and Others***, reported in ***(2015) 4 SCC 334***, to contend that recovery from a retired employee is impermissible in law and to the said effect he has referred to paragraph no. 18 thereof, which is reproduced hereinbelow:-

“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 the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the 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.”

5. Having regard to the facts and circumstances of the case, as also the peculiarity of the present case and considering the law laid down by the Hon'ble Apex Court in the case of ***Rafiq Masih and Others*** (supra), this Court finds that since there is no allegation of the petitioner having misrepresented with a view to obtain the benefits of A.C.P., the benefits of the A.C.P. scheme, already granted to the petitioner, prior to his retirement, cannot be recovered by the respondents, after he has stood retired on 28.02.2013.

6. Thus, the order dated 28.03.2014, issued by the District Development Commissioner, Bhagalpur directing for recovering a sum of Rs.5,66,038/- from the petitioner is not



tenable in the eyes of law, hence is quashed.

7. It is needless to state that in case any recovery has already been made, the same shall be refunded to the petitioner, within a period of eight weeks, from today.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

sonal/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.09.2023
Transmission Date	NA

