

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16796 of 2013

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Ranjan Prasad Singh Son Of Late Ram Pravesh Singh, Ex - Assistant Sub
Inspector Of Police, Under Superintendent Of Poli Resident Of Village and
P.O. Bari Mushari - Via - Khaira, P.S. Chapra Muffassil, District - Saran Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department Of Home, Government Of Bihar, Patna
3. The Director General Of Police, Bihar, Patna
4. The Inspector General Of Police Technical Services and Communication ,
Bihar, Patna
5. The Additional Director General Of Police, Technical Service and
Communication Wireless Bihar, Patna.
6. The Secretary, Department Of Finance, Government Of Bihar, Patna
7. The Superintendent Of Police Wireless , Bihar, Patna
8. The Superintendent Of Police, Saran, Bihar
9. The Accountant General A and E , Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. M.P. Dixit, Adv. Mr. S.K. Dixit, Adv. Mr. S.K. Chaubey, Adv. Mrs. Swastika, Adv.
For the Respondent/s	:	Ms. Deepika Sharma, AC to SC-9 Mr. Aayush Abhishek, Adv.
For the A.G.	:	Mr. Bindhyachal Rai, Adv.

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

2 17-01-2023

1. Heard the parties.

2. The petitioner by way of this writ petition assails
the order dated 25.06.2012, whereby the orders of recovery of
excess amount paid to the petitioner has been passed. The
recovery is directed to be made from the pension and retiral
benefits awarded to the petitioner.



3. Learned counsel for the petitioner submits that considering that the petitioner was a senior employee vide order dated 24.02.1992, the petitioner was given the benefit of pay protection with effect from 10.09.1996. The petitioner continued to draw said benefit till he attained superannuation on 31.08.2010. Thereafter he received an order on 08.12.2011, by which the pay of the petitioner was reduced and re-fixed with retrospective effect i.e. 10.09.1996. After making representation, the petitioner filed C.W.J.C. No.6541 of 2012, challenging the said action of reduction of pay. The Court directed the respondents as under:-

“Since the matter is being disposed without a counter affidavit liberty is granted to the respondents to serve a show cause notice and proceed afresh. Apart from materials of justification for reduction of the pay scale, the show cause notice must also disclose the authority of the respondents to exercise disciplinary and administrative control over the petitioner after superannuation apart from the Bihar Pension Rules. After the petitioner shows the cause the respondents are then required to consider the matter in light of the order in CWJC No.12526 of 2008. If they opine that the petitioner is not similarly situated they are supposed to furnish grounds for difference of opinion, grant him personal hearing and then pass fresh reasoned order.

The order dated 08.12.2011 is set aside.

The respondents are obliged to take such final decision preferably within a maximum period of eight weeks from the date of receipt and/or presentation of a copy of this



order failing which any deduction made are required to be refunded.

The writ application is allowed.”

4. Taking into consideration the said order of the High Court, the respondents have passed the impugned order dated 25.06.2012. Learned counsel submits that there is no occasion to make any recovery. Further, he relies on another order passed in the case of similarly situated person Shyam Nandan Sharma, wherein this Court has held in C.W.J.C. No. 18616 of 2012 as under:-

“I, therefore, constrained to quash annexure-1 and 2 to that extent that amount if not already deducted will not be deducted and if amounts have been deducted they shall be refunded to the petitioner within a period of one month from the date of production of a copy of this order before the Director General of Police, Bihar, Patna whose responsibility would be to comply the order of this Court. Let it be noted that the question whether the pay scale has been correctly revised or not has not been raised in this writ petition as the matter is pending before the authority and if and when the occasion arises, petitioner reserves his right to challenge the same if any adverse order is passed in this connection.”

5. Per contra, learned counsel appearing for the respondents submits that as per the condition of service, if an excess amount has been paid, the same is liable to be recovered even after a person retires. Learned counsel submits that at the time of retirement, the petitioner pay band was Rs.18,590/- and



grade pay was Rs.4200/- as per new pay structure effective from 01.01.2006. The sixth pay revision pay structure was made effective from 01.01.2006 and accordingly the petitioner's salary was required to be fixed in the similar pay scale. It was later on found that on the basis of the audit report that the pay of the petitioner was incorrectly fixed as on 01.01.1996 and therefore recovery orders were issued for the excess payment paid. Accordingly, the re-fixation was done and pay was reduced. The petitioner was therefore entitled to reduced salary as the excess amount paid required to be recovered.

6. I have considered the submissions.

7. The petitioner attained superannuation on 31.08.2010 and at the time of retirement he was in the band pay Rs.18590/- with grade pay Rs. 4200/-. In the garb of revision his pay under the new pay scale rules, the respondents could not have after retirement proceeded to reduce the pay of the petitioner. Such action not only is in violation of the provisions of principles of natural justice but also contrary to the view already taken in the case of Shyam Nandan Sharma Vs. State of Bihar decided on 24.01.2013 (supra). The petitioner, therefore, is entitled to continue to get his pension on the basis of the last pay drawn. Moreover, he was entitled to pay protection also.



8. A person who has attained superannuation and has started drawing pension, acquires an indefeasible right to continue to obtain the said pension. The same can be reduced or withdrawn only in terms of directions issued by the Governor as per the Pension Rules. There is no authority available with the respondents to revise the salary and reduce the pension after retirement, that too without giving any opportunity of hearing to the concerned person. The action of the respondents is thus found to be illegal and unjustified.

9. Accordingly, no recovery at all could have been made nor the pension could have been reduced. On both counts, the order dated 25.06.2012 is unsustainable and is accordingly quashed with consequential benefits. If any recovery has been made, the amount shall be returned and pension shall be also restored originally. The difference of pension as arrears shall be paid with interest @ 9% per annum. Exercise to be conducted within 3 months.

10. Writ petition is allowed.

(Sanjeev Prakash Sharma, J)

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Item no.29

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