

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21151 of 2013

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Lallan Kumar Jha S/O Late Kulanand Jha R/O Village - Bhut Bhagwanpur,
P.S. - Madhepur, District – Madhubani Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Revenue and Land Reforms Department.
2. Director Consolidation, Govt. Of Bihar, Patna
3. Consolidation Officer, Bihiya, Bhojpur
4. District Account Officer, Bhojpur, Ara
5. Secretary, Finance Department, Govt. Of Bihar, Patna Respondent/s

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Appearance :

For the Petitioner/s : None

For the Respondent/s : Mr. Sushil Kumar Singh, AC to AAG-13.

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 02-02-2023 No one appears for petitioner.

2. The petitioner by way of this writ petition has assailed the order dated 04.09.2013 whereby the Director, Consolidation Bihar directed the other respondents to inform the District Account Officer to revise the pay scale of draftsman and adjust the excess payment. Petitioner further prays for issuance of direction to the respondents not to interfere with the salary of the petitioner.

3. During the pendency of the writ petition, the petitioner retired in the year 2013. The respondents have filed a counter affidavit and it has been stated that Director of Consolidation has issued an order on 31.01.2012 and sanctioned ACP benefits to the draftsman and it was stated that if there is any error towards fixation of the pay/promotion in regard to sanction of first and second ACP benefits, the same would be



corrected and excess amount would be adjusted from the employee. The District Accounts Officer raised objection about the anomaly of the scale and after receiving the objection, the Directorate of Consolidation sent its opinion and was ultimately decided that the pay slip of draftsman can be granted permissible pay scale of Rs.4000-6000 with effect from 01.01.1996 whereas earlier pay scale of Rs.4500-7000 and Rs.5000-8000 were released to some employees holding the post of draftsman. Therefore, their pay scale was required to be revised. It has also been stated that the petitioner was also granted benefit of first ACP in the pay scale of Rs.5000-8000 and second ACP in the pay scale of Rs.5500-9000 with effect from 09.08.1999.

4. The guidelines were issued for making recovery of the excess payment made to the employees and a notice was therefore served upon the petitioner on 08.11.2017 for making recoveries.

5. Learned counsel for the respondents submits that the petitioner was very well in know of the wrongful payment made in 2013 itself before he had retired and therefore it is not a case where after retirement the revision has been made or that the recoveries are made on the basis of fault of the respondents.



But it is the revised opinion of the Finance Department, according to which, the pay scale of the draftsman was fixed. Accordingly, ACP has also been granted. In view thereof, the recovery can be made from the petitioner.

6. I have considered the submissions.

7. In *State of Punjab & Ors. v. Rafiq Masih and others* reported in (2015) 4 SCC 334, the Supreme Court 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 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.”

8. However, in a subsequent judgment passed by the Supreme Court in the case of **High Court of Punjab & Harayana and Ors. v. Jagdev Singh** as reported in **2016 (14) SCC 267**

“10. In State of Punjab v. Rafiq Masih [State of Punjab v. Rafiq Masih, (2015) 4 SCC 334 : (2015) 2 SCC (Civ) 608 : (2015) 2 SCC (L&S) 33] this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law : (SCC pp. 334-35)

(i) Recovery from employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from 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.

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.



12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years."

9. The Hon'ble Apex Court has held that if there is a condition mentioned in the order that on account of erroneous fixation if any excess payment is made, the same can be recovered. Such recovery would not be excused.

10. In view of what have been noticed above, this Court is satisfied that the petitioner was granted excess payment while he was in service and the said aspect was informed to him while he was in service. His pay was revised and the benefit of ACP was granted to him while he was in service.

11. Keeping in view thereto, the law as laid down by the Hon'ble Apex Court in the **High Court of Punjab & Harayana and Ors. v. Jagdev Singh** shall have an application and the recovery made by the respondents cannot be said to be objectionable.

12. The writ petition is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

Brajesh Kumar/-
Item no.48

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