

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6982 of 2023

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Santosh Kumar Sinha, Son of Late Sushil Kumar Roysen, Resident of Flat No. 303, 3rd Floor, Aroma Signature Apartment, Nirala Nagar, Digha, P.S. - Digha, District- Patna-800011.

... .. Petitioner

Versus

1. The State of Bihar Through the Principal Secretary, Department of Industries, Secretariat, Bihar, Patna
2. The Principal Secretary Department of Industries, Secretariat, Bihar, Patna
3. The Deputy Secretary, Department of Industries, Secretariat, Bihar, Patna
4. The General Manager, District Industries Centre, Sheikhpura
5. The Incharge Officer, Finance Department Personal Claim Resolution, Old Secretariat, Bihar, Patna
6. The Accountant General, Birchand Patel Road, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Surendra Kumar, Advocate
For the A.G.	:	Ms. Ritika Rani, Advocate
For the State	:	Mr. Shankar Kumar, AC to AAG-7

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 18-08-2023

Heard Mr. Surendra Kumar, learned counsel appearing on behalf of the petitioner; Ms. Ritika Rani, learned counsel appearing on behalf of Accountant General and Mr. Shankar Kumar, learned AC to AAG-7 for the State.

2. In the present writ petition, the petitioner has prayed for following reliefs:

“(i) Issuance of writ in the nature of certiorary to quash the order dated 31.03.2023 vide Memo No. 2135 passed by the Deputy Secretary, Department of Industries, Bihar, Patna



who has rejected the representation of the petitioner pursuant to the order passed in C.W.J.C. No. 1410 of 2023 dated 23.02.2023 by Hon'ble Mr. Justice R.R. Prasad (Annexure-16).

(ii) Issuance of writ in the nature of Mandamus directing and commanding the respondent not to act upon revised and reduced the pension from Rs. 42,550/- to 41,300/- (difference of Rs. 1250/-) in monthly pension recover from the amount of commutation of pension and gratuity of the petitioner which has been sanctioned on 07.04.2021 (Annexure-6) by the competent authority.

(iii) Issuance of direction to the respondent to keep Annexure-7 and 8 in abeyance.

(iv) Any other relief/reliefs as may deed fit and proper by this Hon'ble Court."

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has retired from the post of In-Charge General Manager on 31.08.2020. The petitioner is aggrieved on account of recovery amounting to Rs. 51150/- from gratuity and Rs. 49164/- from the pension of the petitioner on the basis of letter dated 30.01.2023 of the Principal Secretary, Department of Industries Secretariat, Bihar, Patna (Respondent No.2) as contained in Annexure-16. Learned counsel submitted that in paragraph No. 17 of the counter affidavit, the respondents have admitted that the pay fixation of the petitioner was done by the District Accounts Officer, Purnea and the same



was verified by the District Accounts Officer, Patna vide letter no. 3545, dated 18.10.2014, however, no action was taken on the basis of letter no. 3545, dated 18.10.2014 by the Finance Department, Government of Bihar and after retirement of the petitioner, the Authorities have illegally proceeded to recover from the pension and gratuity of the petitioner after lapse of about 8 years. On the above admitted facts, learned counsel submitted that the action taken on account of time bound promotion granted to the petitioner merely after 29 years is without authority of law. The petitioner was not responsible in any manner for withdrawing more salary on account of any account of incorrect fixation of pay scale, which has been admitted by the respondents. The petitioner has not misappropriated or misrepresented or committed any fraud. He further submitted that in this regard, the law is well settled by the Apex Court in the case of ***Amresh Kumar Singh & Ors. Vs. The State of Bihar & Ors.*** reported in ***(2023) SCC OnLine SC 496.***

4. Learned counsel appearing on behalf of State submitted that the pension of the petitioner was fixed on incorrect pay scale, which was detected in the way back in the year 2014. However, the action of recovery of excess amount,



which has been paid to the petitioner due to incorrect fixation has made after lapse of 29 years.

5. Having considered the rival submissions made on behalf of the parties as well as the fact that petitioner was granted financial upgradation of time bound promotion ACP and MACP even incorrectly no recovery can be made from the pension of the petitioner after lapse of nearly 29 years, as informed by the learned counsel appearing on behalf of the petitioner. It is admitted from the pleadings made in the counter affidavit that in the year 2014, the Department of Industries had found that the petitioner has been granted higher pay scale from time to time and ultimately superannuated on 31.08.2020 and it is also admitted that the salary of the petitioner was fixed on the enhanced pay, however, no action was taken during the service period of the petitioner.

6. It has been admitted in paragraph No. 8 of counter affidavit filed on behalf of respondents No. 2 and 3 that the last pay drawn by the petitioner is Rs. 85,100/-, accordingly, the pension of the petitioner has been fixed Rs. 42,550/- any recovery made from the pensionary benefit after lapse of more than two decades is not sustainable in the eye of law as well as law laid down by the Apex Court. The petitioner has not



misrepresented or misappropriated any fund on his own. However, the Authorities have admitted that the same has been granted on account of incorrect fixation of pay scale. The State cannot penalize the petitioner by realizing from the pensionary benefit of the petitioner. The petitioner, if so advised, may file a detailed representation before the concerned authority, who will decide to take steps to make payment of retiral dues in accordance with law and in the meantime return the amount which has been recovered from the pension of the petitioner.

7. With the above observations and directions, the writ petition stands disposed of.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.08.2023
Transmission Date	N.A

