

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8400 of 2023

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Dilip Kumar Singh Son of Late Ganesh Prasad Singh Resident of Village-
Bajjnathpur, Police Station- Sitamarhi in the district of Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary (Home), Government of Bihar, Patna.
2. The Principal Secretary (Home), Government of Bihar, Patna.
3. The Director General of Police, Government of Bihar, Patna.
4. The Deputy Inspector General of Police, Magadh Range, Gaya.
5. The Superintendent of Police, Nawada.
6. The Treasury Officer, Nawada.
7. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar, Advocate
For the Respondent/s	:	Mr. M. Nasrul Huda Khan, SC- 1
	:	Ms. Babita Kumari, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 13-10-2023

Heard Mr. Sunil Kumar, learned Counsel appearing
on behalf of the petitioner and Mr. M. Nasrul Huda Khan,
learned SC- 1 appearing on behalf of the State.

2. The petitioner is aggrieved by the Nawada District
Order No.1115 of 2021 contained in Memo No.170 dated
07.10.2021 issued under the signature of S.P., Nawada, by
which the pension of the petitioner has been revised and vide
Memo No.1214 dated 22.06.2022, the Treasury Officer, Nawada
has been directed to deduct a sum of Rs.3,11,724/- from the
gratuity and pension of the petitioner. The reason for the said
recovery has been stated in paragraph no.7 of the counter-

affidavit that a departmental proceeding was conducted against the petitioner due to which his annual increment was held up for a period of 6 months.

3. Considering the fact that monetary benefits of second Assured Career Progression Scheme, with effect from 18.01.2008, was given to the petitioner vide District Order No.404 of 2010 in the Grade Pay of Rs.4200/-, which was found to be incorrect by the respondent, which according to respondent, after proper verification was found to effective from 30.06.2012 as against 18.01.2008, and same required to be shifted as per date of actual entitlement, from 18.01.2008 to 30.06.2012. During the said period, petitioner had allegedly drawn higher pay scale from 18.01.2008 till 30.06.2012. The recovery was accordingly proposed to be made from the petitioner. The respondents have admitted that petitioner is entitled for benefit of third modified Assured Career Progression Scheme from 16.07.2017 in level 7 with pay revision and monetary benefits effective from 01.04.2017. The Apex Court in the case of **Amresh Kumar Singh & Ors. Vs. The State of Bihar & Ors.** reported in (2023) SCC OnLine SC 496 has held that :-

“It may be worth noting that the ACP scheme was enforced on the recommendation of the Fifth Central Pay

Commission in context with Group C and D employees and it provided monetary benefit to the employees on completion of 12 years and 24 years of regular service who were not able to get promotion. The scheme as such was anti-stagnation and envisages merely placement of the employees in the higher pay scale for the grant of financial upgradation only without grant of actual promotion. The benefit of the ACP as such is like granting non-functional in situ promotion.”

4. On perusal of the writ petition it appears that a sum of Rs.12,29,894/- was sanctioned to be paid to the petitioner vide PPO order dated 08.01.2022, issued from the office Accountant General, Bihar (Annexure 3). However, after deducting Rs.3,11,724/- only Rs.9,18,170/- has been paid to the petitioner against the total amount of gratuity sanction by the Accountant General, Bihar. In paragraph no.10 of the writ petition, it has been stated that, in complete violation of principle of natural justice, without issuing any Notice to the petitioner or having provided opportunity of hearing to the petitioner before deduction of alleged excess amount paid to him from the total sanctioned amount of Gratuity can not be sustained.

5. Considering the aforesaid facts, the point which has to be determined by this Court is, as to whether the respondent's

action in recovering the sum of Rs.3,11,724/- from the petitioner is in accordance with law, which allegedly had resulted due to incorrect fixation of the salary during the service period of the petitioner i.e. from 18.01.2008 till 30.06.2012, and the petitioner was allowed to draw enhanced pay. The respondents have admitted that the same was due to incorrect fixation of pay and not due to any misappropriation or misrepresentation or fraud committed by the petitioner. The petitioner retired from the post of Sub-Inspector of Police from District Police Force, Nawada on 31.01.2022 and during the period 18.01.2008 till 30.06.2012, he was working as a constable which is a Class-III post, however, he was promoted to the post of Assistant Sub Inspector in the year 2011. The respondents did not correct their mistakes at the relevant point of time i.e. 16.07.2017, the date from which the petitioner was entitled to the benefit of third MACP (Modified Assured Career Progression Scheme) in level 7, or even thereafter, till the petitioner had retired on 31.01.2022. The respondents have erred by their action to recover the amount without giving any opportunity of hearing to the petitioner and ignoring the law laid down by the Apex Court in case of ***Sahib Ram vs. State of Haryana and Ors.*** reported in ***1995 Supp (1) SCC 18***, and ***Syed Abdul Qadir vs. State of Bihar*** reported in

(2009) 3 SCC 475, in which the Apex Court has deprecated recovery in case of employee from whom recovery is made of the access amount that has been paid to the employee, which was not because of any misrepresentation or fraud on their part and the employee also had no knowledge that the amount that was being paid to them was more than what they were entitled to. The Apex Court in the case of *State of Punjab v. Rafiq Masih* reported in *(2015) 4 SCC 334* and recently in the case of *Thomas Daniel Vs. State of Kerala & Ors.* reported in *2022 LiveLaw (SC) 438*, has reiterated the principle of recovery. The order of recovery, as contained in Memo No.1214 dated 22.06.2022 under signed by S. P., Nawada, in my opinion has been passed in complete violation of principle of natural justice and the law laid down by the Apex Court. Accordingly, the Nawada District Order No.1115 of 2021 contained in Memo No.170 dated 07.10.2021, whereby the pay scale of the petitioner was revised, is set-aside and quashed in the interest of justice.

6. The petitioner may file a representation before the Superintendent of Police, Nawada, who will dispose of the representation of the petitioner in accordance with law laid down in the case of *Sahib Ram (supra)* and *Thomas Daniel*

(*supra*) in which the Apex Court has clarified, interesting sound decision, that financial upgradation can not be accounted for promotion on account of stagnation in service, within 6 weeks from the date of communication of this order.

7. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J.)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.10.2023
Transmission Date	NA