# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.1189 of 2018**

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Pramod Kumar Son of Lat Anant Prasad, Resident of B/13, Road No. 18, Rajiv Nagar, P.S. Rajiv Nagar, District-Patna, retired as Additional District and Sessions Judge-XII, Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, General Administration Department, Government of BIhar, Patna.
3. The Registrar General, High Court, Patna.
4. The District Judge, Patna.
5. The Treasury Officer, Patna.
6. The Accountant General, Bihar, Patna Veer Chand Patel Marg, Patna.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Rajesh Kumar Sinha, Advocate |
| For the State | : | Mr. Sheo Shankar Prasad- SC-8<br>Mr. Sanjay Kumar, AC to SC-8<br>Mr. Anil Kumar, AC to SC-8 |
| For the Respondent Nos. 2 & 3 | : | Mr. Piyush Lall, Advocate |
| For the Accountant General | : | Mrs. Nivedita Nirvikar, Sr. Advocate |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**
**and**
**HONOURABLE MR. JUSTICE PARTHA SARTHY**
**ORAL JUDGMENT**
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 17-08-2023**

The writ petition is filed by an Additional District Judge (for brevity, 'ADJ'), who was compulsorily retired, but later taken back into service with reduction of one-fourth of the back wages. The prayer originally, was for disbursing his pay and perquisites after granting him the Assured Career Progression, which he is entitled to on being taken back into employment.

2. When the writ petition was filed for the above relief, the High Court while computing the benefits claimed by the petitioner found that there was excess payment of back wages. Hence, there was a demand made for refund of the excess amounts paid; which was also challenged in the writ petition by an Interlocutory Application.

3. Sri Rajesh Kumar Sinha, learned counsel for the petitioner vigorously contended that the computation before raising the demand, was done behind his back. Since, it was the Accountant General, who sanctioned the payment of arrears, there should have been a reference to the office of the Accountant General for the purpose of verifying the refund, as computed by the High Court. It was urged that the computation had been made unilaterally and not by the competent authority; who is the Accountant General. It is prayed that the computation be done by the Accountant General and on the Accountant General being satisfied of the same, even the petitioner would comply with the same. The petitioner has also relied on the judgment of the Hon'ble Supreme Court in ***State of Punjab & Ors. v. Rafiq Masih(White Washer) & Ors.*, *(2015) 4 SCC 334*** and the decision in ***Thomas Daniel vs State Of Kerala*** in ***Civil***

***Appeal No. 7115 of 2010*** dated 02.05.2022 to argue against the recovery, which is made against a retired employee. The money has been spent, especially, since the petitioner was without any means of livelihood for the period he was on compulsory retirement and the petitioner has absolutely no source of income from which the amount can be recovered.

4. Learned counsel for the High Court, Sri Piyush Lall, supported the demand of refund, especially pointing out the computation made, which requires no expert verification. It is pointed out that when computing the back wages payable, which was reduced to one-fourth in the order which reinstated the petitioner, the officer, who made the computation unwittingly first reduced the pension paid on compulsory retirement and then reduced the one-fourth of the balance amounts. In fact, one-fourth of the amounts due as back wages should have been deducted and then the amounts paid as pension reduced, for determining the balance payable.

5. The learned Senior Counsel Mrs. Nivedita Nirvikar appearing for the Accountant General submits that the Accountant General only verifies and approves the entitlement of the back wages payable and the computation requires no approval by the Accountant General. The eligibility of the

employee to get the pecuniary benefits alone is approved by the Accountant General.

6. Having gone through the records, we are of the opinion that there is absolutely no requirement for computation by any expert and the facts and figures as pointed out by the High Court requires only an arithmetical verification.

7. On facts suffice it to notice that reckoning observations made in an order disposing of a bail application, passed by the appellant, a learned Single Judge of this Court had taken umbrage to the language employed by the ADJ, the petitioner herein. The Standing Committee of the High Court took note of the observations made by the learned Single Judge and a resolution was passed compulsorily retiring the ADJ from service, in exercise of power under Rule 74(b)(ii) of the Bihar Service Code; which was approved by the Full Court at its meeting dated 18.09.2010.

8. The High Court in compliance of the Full Court resolution passed an order dated 25.09.2010, restraining the petitioner from being assigned any judicial work. A writ petition was filed against the said orders, pending which the Government issued an order dated 16.12.2010 on the basis of the resolution of the Full Court. The writ petition was amended

and the compulsory retirement was challenged. A Division Bench of this Court as per Annexure-B produced in the counter affidavit dated 18.07.2018, filed on behalf of respondent no.4, found that the instructions issued by the High Court in the Cr.Misc., regarding the disposal of the bail applications were not routine in nature and hence the caution shown by the ADJ, while disposing of the bail application directing steps to be taken by the applicant to produce a certified copy of the original order; cannot be faulted.

9. It was found that the only reason for barring the ADJ from judicial work was the observation made in the bail order. There was no serious indictment of the petitioner accusing him of any impropriety, corruption or lack of integrity. Though the decision to retire an employee before he attains the age of superannuation is often times subjective, it should be on the basis of proper materials available and have a semblance of objectivity.

10. The subjective satisfaction of the Administrative Authority should be based on valid materials and if it is so founded, then, there could not be a substitution of the decision arrived at by the Administrative Authority. The Court found the compulsory retirement of the petitioner to be based

only on the observations in the order in the Sessions case, which even if found to be unwarranted, cannot lead to such serious consequences. The petitioner was directed to be reinstated and one-fourth of his back wages was forfeited, which was also directed, not to be treated as a punishment. The aforesaid decision had become final. The petitioner was reinstated in service and then retired on 31.02.2016. The payments due as per the order was made on 02.06.2017, and the demand raised for refund was dated 22.06.2018.

11. The computation is available in Annexure-R produced along with the supplementary counter affidavit of the 4th respondent. The petitioner after his compulsory retirement was paid pension amounting to Rs. 40,19,164/-. The total amounts due to the petitioner as back wages was Rs. 82,98,653/- on his reinstatement. The computation made by the DDO, Civil Court, Patna at Annexure-R, indicates that from the total amounts payable, the pension disbursed was first reduced and back wages payable was computed as Rs. 42,79,489/-. From this amount, one-fourth was deducted coming to Rs. 10,69,872.25/-. It is the balance arrived at; being Rs. 32,09,617/-, which was paid to the petitioner after deducting income tax of Rs. 9,25,000/-.

12. Obviously a mistake had been committed and one-fourth of the amounts had to be deducted from Rs. 82,98,653/- and then the amount paid as pension coming to Rs. 40,19,164/- had to be deducted. We find no warrant for an expert computation and fully agree with the demand raised. We find no reason to interfere with the demand raised and the petitioner would be liable to pay the same.

13. As far as the decisions relied on, we notice the judgment of the Hon'ble Supreme Court in ***Thomas Daniel*** (supra) which extracted from ***Rafiq Masih*** (supra) as follows:-

> ***"8.*** *As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.*

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***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."*

14. In the present case there is no allegation of fraud or misrepresentation played by the petitioner. However, the petitioner retired from the cadre of ADJs and he was not a Class-III or Class-IV employee. The excess payment was not made, over any period of time and it was only on a wrong computation made in 2017. The excess amounts paid, were sought to be recovered, in 2018 itself. There was very minimal time gap between the disbursement and the demand raised for recovery.

15. We cannot find the recovery to be iniquitous, harsh or arbitrary, nor does it outweigh the equitable balance of the employers' right to recover. We, however, observe that whatever is due to the petitioner as arrears of pay, on grant of Assured Career Progression and also the revision of pension on the last pay drawn, if any, shall be computed and the same deducted from the demand now raised.

16. Learned counsel for the petitioner had also raised doubts as to the amounts computed as payable to him on grant of ACP. In such circumstances, the petitioner shall file a computation statement before the appropriate authority of the respondents within a period of one month from the date of

receipt of the certified copy of this judgment. The appropriate authority shall consider the same and give a computation showing the amounts due under each head i.e. on grant of ACP, the arrears of pay, the last pay drawn and the revision of pension applicable, with periods specified. The appropriate authority shall also indicate the balance refund demanded after adjusting the above amounts against the demand raised. The petitioner shall also be granted twenty four monthly installments for satisfying the demand, from the month of September, which if done on a monthly basis without two consecutive defaults, there shall be no interest claimed by the respondents.

17. The writ petition would stand disposed of with the above directions.

**(K. Vinod Chandran, CJ)**

**( Partha Sarthy, J)**

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| **AFR/NAFR** | |
| **CAV DATE** | |
| **Uploading Date** | 21.08.2023 |
| **Transmission Date** | |