

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 2745 of 2018

Latifur Rehman Son of Fazalur Rehman, Resident of Bajrang Bali Mandir,
Road No.5, New Aliganj, Gaya, Police Station- Gaya, District- Gaya, Pin-
823001.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Finance Department,
Government of Bihar, Patna
2. The Principal Secretary, Revenue and Land Reforms Department,
Government of Bihar, Patna.
3. The Director, Consolidation, Bihar, Patna.
4. Joint Director, Consolidation (Head Quarter), Bihar, Patna.
5. Deputy Director, Consolidation, Rohtas at Sasaram.
6. The Consolidation Officer, Ramgarh, District- Kaimur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr Jitendra Prasad Singh, Advocate
For the Respondent/s : Mr Sajid Salim Khan, SC XXV

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 18-09-2023

Heard the parties.

2 Prayer is for the following reliefs:

“That this is an application for issuance of a writ in the nature of certiorari quashing the order dated 02.06.2017 issued by the respondent Joint Director, Consolidation, Bihar, Patna by which he has directed for recovery of amount paid to the petitioner pursuant to the grant of Assured Career Progression (in short ACP) without any valid reason and further respondents may be directed to grant benefit of 03rd ACP. And/or to grant any other relief/reliefs for which the petitioner is legally entitled in the facts and circumstances of the case.”



3 The case of the petitioner is that :

i) the petitioner was appointed on 07.05.1979 as Draftsman and retired on 31.01.2017;

ii) he was granted the first and second ACP effective from 09.08.1999 and 07.05.2003 respectively but third ACP eluded him;

iii) in the grant of ACP, there was no misrepresentation in his part but letter No 358 dated 02.06.2017 was issued under wrong pay scale, the ACP benefits granted and, accordingly, direction for recovery was issued (Annexure 2);

iv) the same has to go and he is further entitled to the 03rd ACP.

4 A counter affidavit on behalf of respondents No 2 to 4, filed on 20.09.2019 after serving copy on the petitioner, is on record. Paragraphs 5 to 17 read as follows:

5 The petitioner was appointed on 07.05.1979 as draftsman and retired from service on 31.01.2017.

6 As per letter No 4058 dated 28.07.2005 for Finance Department, Bihar, Patna, the category-I/Senior Draftsman whose qualification is Matric or 10+2 with Diploma in Engineering, are entitled for pay scale 5000-8000/-, otherwise entitled for pay scale 4500-7000/- only. So it is crystal clear that pay scale 4500-7000 or 5000-8000/- is entitled to category-I/Senior Draftsman w e f 01.01.1996, after revising the earlier resolution No 660 dated 08.02.1999 of Finance Department, Bihar, Patna.

7 Thereafter the State Government took policy decision that after abolition of the time bound,



Junior/Senior grade promotions, the benefits of promotion is given through a new scheme named as Assured Career Progression (ACP) w e f 09.08.1999 after completing the service of 12 years and 24 years. The service period is counted from the date of appointment on basic post.

8 In this case the pay scale of petitioner was fixed in 5000-8000 in place of pay scale 4000-6000 w e f 01.01.1996 because the pay scale which was given to the petitioner is entitled to the post of category-I/Senior Draftsman.

9 The Directorate of Consolidation, Bihar, Patna vide letter No 642 dated 04.07.2011 has sanctioned ACP benefits to the draftsman of Consolidation including the petitioner with a condition mentioned in paragraph No 3 of the said letter that if any error to be found towards fixation of pay/promotion in the way of sanctioned ACP benefits, the benefits order would be cancelled/corrected and excess paid amount would be adjusted/recovered from the employees.

10 The District Accounts Officer of various districts raised their objections about the anomaly of pay scale of some cadre (Draftsman), in the pay scale 4500-7000/5000-8000/- w e f 01.01.1996.

After receiving the objection from District Accounts Officer, the Directorate of Consolidation, Bihar, Patna has sent file to seek opinion from Finance Department, Bihar, Patna in this regard on 28.05.2012.

The Finance Department, Bihar, Patna has given opinion that the draftsman of Directorate of Consolidation, Bihar, Patna is only permissible for pay scale of 4000-6000 w e f 01.01.1996.

11 On the basis of letter No 4058 dated 28.07.2005, some employees of Consolidation have taken/given pay scale 4500-7000 and 5000-8000 w e f 01.01.1996 to Draftsman while no any draftsman of



Consolidation fulfill the criteria which has been mentioned/raised in the same letter.

12 The Directorate of Consolidation, Bihar has issued a general guideline to all Consolidation Offices vide letter No 755 dated 17.07.2012 for fixation of pay scale of Draftsman Cadre in 4000-6000 w e f 01.01.1996. In the guideline, it is specifically mentioned that if anyone has already been given/taken higher pay scale in Draftsman cadre, the adjustment of excess paid amount will be made from the salary of the employees. Again vide letter No 986 dated 04.09.2013 guidelines have been issued and sent to all concerned offices.

13 The petitioner has taken/given benefit of first ACP in pay scale 5500-9000 w e f 09.08.1999 and second ACP on pay scale 6500-10500 w e f 07.05.2003, after seeking out opinion from Finance Department, Bihar, Patna, the petitioner is only entitled the first ACP in pay scale 4500-7000/- w e f 09.08.1999 and the second ACP in pay scale 5000-8000 w e f 07.05.2003, on the basis of pay scale 4000-6000/- w e f 01.01.1996.

14 Again a guideline has been issued from Directorate of Consolidation, Bihar, Patna vide letter No 54 dated 11.01.2016, letter No 358 dated 02.06.2017 and letter No 148 dated 12.02.2018 to all Joint Director, Deputy Director, Assistant Director and all Consolidation Offices for taking effective steps for recovery/adjustment of excess payment from salary/benefits to the draftsman and if fails, the liability will be fixed on the responsible Drawing and Disbursing Officers (DDOs).

15 It is relevant to mention here that the writ petitioner was single employee in the Consolidation Office, Ramgarh (Kaimur) and he was incharge of all files, records and documents related to that office.

Letter No 755 dated 17.05.2012 and 986 dated 04.09.2013 of Directorate of Consolidation, Bihar, Patna were sent for adjustment of excess payment from Draftsman and to fix the pay scale as per direction of



Finance Department, Bihar, Patna. The petitioner was incharge Head Clerk of his office during this period. The petitioner had willingly not acted upon the guidelines of the Directorate of Consolidation, Bihar, Patna and sat over the matter till the superannuation which shows that due to inaction of petitioner, adjustment of excess payment has not been made till his retirement.

So, the petitioner was well acquainted with the facts of wrong pay scale and knowingly not acted upon in respect of correction of pay scale which shows mala fide intention of the petitioner. It is a case of misrepresentation of facts on behalf of petitioner and on the basis of wrong pay scale, the excess payment is liable to be recovered from him.

16 It is relevant to mention here in that regarding the recovery of excess salary, the guidelines had already been issued in year 2012 & 2013 but the petitioner as a Head Clerk/Incharge had not disclosed the irregularity of fixation of pay scale when he was acquainted with the said anomaly.

17 The answering respondent craves leave of this Hon'ble Court to file further supplementary affidavit as and when directed by this Hon'ble Court."

5 Though learned counsel for the petitioner tried to persuade this Court that there was no misrepresentation on his part and as such his case is covered by an order of Hon'ble Apex Court in the case of ***State of Punjab & Others -Versus- Rafiq Masih (White Washer), (2015) 4 Supreme Court Cases 334***, a bare perusal of paragraph 15 of the counter affidavit which has not been rebutted by the petitioner by way of rejoinder petition, it is clear that the petitioner was single employee in the Consolidation



Office, Ramgarh in the district of Kaimur and also the Incharge of all the files, records and documents related to that office.

6 When the letter No 755 dated 17.07.2012 and letter No 986 dated 04.09.2013 of the Directorate of Consolidation, Bihar, Patna were sent to the Consolidation Office for adjustment of excess payment and to fix the pay scale; he being the Incharge/Head Clerk in the office deliberately sat over the matter for years till he superannuated on 31.01.2017.

7 In that background, the petitioner was well aware of the entire facts and knowingly chose to sit over the matter for years, he being the sole employee/Head Clerk in the Consolidation Office, Ramgarh (Kaimur) and custodian of entire files, records and documents of the office, till he retired.

8 Thus, the order passed by the Hon'ble Apex Court in the case of *State of Punjab & Others -Versus- Rafiq Masih (White Washer) (supra)* will not come to his aid.

9 No relief can be granted to the petitioner. The writ petition stands dismissed.

(Rajiv Roy, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.09.2023
Transmission Date	NA

