IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10898 of 2022

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Krishnakant Narayan Singh, Son of Late Shiv Narayan Singh, resident of Adai Bhawan, OTA Gate No. 5, Paharpur, Police Station-Medical Gaya in the district of Gaya.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Secretary, Expenditure, Finance Department, Government of Bihar, Patna.
4. The Director, Primary Education, Government of Bihar, Patna.
5. The District Magistrate-cum-Collector, Gaya.
6. The District Education Officer, Gaya.
7. The District Program Officer (Estb.), Gaya.
8. The Treasury Officer, Gaya Treasury, Gaya.
9. The Accountant General, Bihar, Patna.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 13626 of 2022

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Umesh Prasad Singh, S/o Late Bachchu Singh, Resident of Village-Mahmadpur, P.O.- Utrain, Police Station- Tekari in the District of Gaya.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Secretary, Expenditure, Finance Department, Government of Bihar, Patna.
4. The Director, Primary Education, Government of Bihar, Patna.
5. The District Magistrate-cum-Collector, Gaya.
6. The District Education Officer, Gaya.
7. The District Programme Officer (Estb.), Gaya.
8. The Treasury Officer, Gaya Treasury, Gaya.
9. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 10898 of 2022)
For the Petitioner/s : Mr. Sunil Kumar, Adv.

For the Respondent/s	:	Smt. Binita Singh, SC-28
For the AG, Bihar	:	Mr. Chaitanya Suaroop, Adv.
(In Civil Writ Jurisdiction Case No. 13626 of 2022)		
For the Petitioner/s	:	Mr. Sunil Kumar, Adv. Mr. Pankaj Kumar, Adv.
For the Respondent/s	:	Mr. Kameshwar Kumar, GP-17 Mr. Amit Bhushan, AC to GP-17
For the AG, Bihar	:	Mr. Bindhyachal Rai, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 21-12-2023

The issue(s) involved in both the writ petitions are identical in nature, except certain facts relating to service particulars of the writ petitioners, thus with the consent of the parties, the same are being heard together and disposed of by this common order.

2. Heard Mr. Sunil Kumar, learned counsel for the petitioners in both the cases, the learned counsel for the State and the learned counsel for the Accountant General, Bihar.

Re.: C.W.J.C. No. 10898 of 2022

3. The petitioner by preferring the writ petition seeking quashing of the Letter contained in Memo No. 10/Pen100522102258/202211101853PO dated 17.06.2022 issued under the signature of Senior Accounts Officer, to the extent whereby an amount of Rs.2,52,522/- has been recovered from the total gratuity amount of Rs. 15,13,050/- sanctioned to the petitioner. He also sought a direction upon the respondents to fix the pension of the petitioner on the basis of his last pay drawn at Rs.74,300/- on which the petitioner superannuated.

4. The petitioner was appointed as an Assistant Teacher in the month of December, 1981 and he was posted in Kanya Middle School, Chandauti, Gaya. He was granted Matric Trained Scale w.e.f. 01.01.1986 and subsequently he was allowed Selection Grade on 01.01.1998 in the pay-scale of Rs. 5000-8000. In course of time, the petitioner was allowed Super Selection Grade w.e.f. 01.01.2010 in the pay-scale of Rs. 5500-9000. The petitioner was further promoted to the post of Graduate Trained Teacher on 29.06.2010 and his salary was fixed after giving one increment as per Primary School Teacher Promotion Rules, 1993. The petitioner having been found eligible, promoted to the post of Head Master on 02.03.2017 in pursuance to Primary Teacher Promotion Rules, 2011. He finally superannuated from the post of Head Master on 30.11.2021.

5. It is the case of the petitioner that after attaining the age of superannuation from the post of Head Master, Middle School, Nimsar under Tekari Block in the district of Gaya on 30.11.2021 in the pay-scale Rs.74300/- (P.B.+G.P.), the petitioner had submitted his applications before respondent no.5 for fixation of pension, and also for payment of post retirement benefits. However, his pension has been fixed vide letter dated 17.06.2022 issued from the office of the Accountant General,

Bihar, Patna, at Rs. 35,000/- after deducting two increments at the pay-scale of Rs.70,000/-. It is further case of the petitioner that an amount of Rs.2,52,522/- has also been deducted from the total sanctioned amount of gratuity of Rs.15,13,050/-. The reason for the aforesaid deduction has been said to be wrong fixation of his due salary.

6. Counter affidavit(s) have been filed on behalf of respondents no.7 and 9.

7. It is the stand of the respondents that on being superannuated on 30.11.2021, the pension papers and all the necessary documents have been sent to the office of the Accountant General. On verification of the same, the office of the Accountant General, Bihar vide its Letter no. Pen-10-951 dated 28.06.2022, has communicated the department that as per the entries made in the service book, while being accorded promotion to the petitioner in Pravaran Vetanman from 01.01.2010 had been given benefit of increment in pay, whereas as per the Finance Department, Bihar, Letter no.4746 dated 16.11.2020 fixation in Pravaran Vetanman was to be done in terms of FR-22(1)(a)(2).

8. It is submitted that the petitioner was not eligible for any increment while granting promotion in Pravaran Vetanman and the aforesaid issue had also been stood clarified

by the Finance Department vide Letter no. 5770 dated 10.11.2020, on the basis thereof, the last pay of the petitioner has been fixed by the Accountant General, Bihar at Rs. 70,000/- as contained in Annexure-1 to the writ petition.

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9. The petitioner by preferring the writ petition seeking quashing of the letter dated 02.08.2022 issued under the signature of District Program Officer (Estb.), Gaya addressed to the Treasury Officer, Gaya, stating therein, *inter alia,* that after deducting excess amount of Rs.4,86,874/- from the sanctioned amount of gratuity, ensure the payment of rest of the amount of gratuity to the petitioner. The petitioner also sought a direction upon the respondents to ensure his proper fixation of pension on the basis of his last pay without deducting any increment as has been done by the respondents.

10. The petitioner was duly appointed against the post of Assistant Teacher in the month of September, 1991 and was posted in Urdu Primary School, Chuanwar under Mohanpur Block in the district of Gaya. He was granted Selection Grade Scale in the month of September, 2003 in the pay-scale of Rs.5000-8000. He was further granted promotion to the post of Graduate Trained Teacher on 29.06.2010 and thereafter his salary was fixed after giving one increment as per Primary

School Teacher Promotion Rules, 1993. Having found his satisfactory service and on being eligible, the petitioner was promoted to the post of Head Master on 21.02.2017 in pursuance to the Primary Teacher Promotion Rules, 2011. Subsequently, after attaining the age of superannuation, the petitioner retired from the post of Head Master, Middle School, Fatehpur, Gaya on 31.03.2022 in the pay-scale of Rs. 72,100/- (P.B.+G.P.).

11. It is submitted on behalf of the petitioner that after fixation of salary of the petitioner at the time of Selection Grade and also at the time of promotion in Graduate Trained Scale in the year, 2010, the fixation of salary was also approved by the Finance Department i.e. the District Accounts Officer, Gaya and since then the petitioner was getting salary regularly. It is further submitted that on being superannuated, the petitioner had submitted all the relevant papers/documents for fixation of pension and other retiral benefits. Accordingly, the Accountant General, Bihar, Patna, had sanctioned the amount of gratuity to the tune of Rs.13,48,710/- but after deducting three increments and making it a basis, the department has directed to recover the excess paid amount to the tune of Rs.4,86,874/- from the sanctioned amount of the gratuity of the petitioner at Rs.13,48,710/-. It is also submitted at the Bar that earlier one

increment of the petitioner was curtailed which was given at the time of promotion in Graduate Trained Scale, against which the petitioner and others approached this Court in C.W.J.C. No. 14325 of 2019 and in the said case, the recovery of the excess paid amount was stayed under the order dated 18.07.2019. Accordingly, the consequential order has been passed by the District Education Officer, Gaya, by which the recovery of the petitioner and others was stayed.

12. Counter affidavit(s) have also been filed in this case by respondents no.7 and 9.

13. Apart from the other submissions, which have been made in the afore-noted writ petition [C.W.J.C. No. 10898 of 2022], it is submitted that the petitioner was the Drawing and Disbursing Officer, and he, himself had got his pay erroneously fixed in higher pay-scale w.e.f. 07.09.2003 and further had got its revised scale from 01.01.2006 and on the said basis, in terms of Finance Department, Bihar, Resolution No. 8921 dated 07.12.2018 had got his pay fixed at the minimum stage under Schedule-II, though the aforesaid Resolution dated 07.12.2018, in case of higher scale, was not applicable to the Teachers of Rajkiyakrit Elementary School. This position has also been clarified by the Finance Department vide Circular No. 5770 dated 10.11.2020. In the afore-noted premise, the Accountant

General, Bihar, vide Letter no. Pen-10-1819 dated 01.12.2021, directed the authorities of the department to send pension papers with due correction(s). The matter was also placed before the Additional Chief Secretary, Education Department, who having considered the matter approved the opinion of the Accountant General and directed to ensure compliance of the direction so given by the Accountant General and accordingly the excess amount has been directed to be recovered. Learned counsel for the State further made reliance on a judgment rendered by the Apex Court in **High Court of Punjab & Haryana v. Jagdev Singh [2016 (4) PLJR SC 78]**.

14. Learned counsel for the petitioners while assailing the impugned order(s)/action(s) of the respondents, directing for recovery of the alleged excess amount from the gratuity, paid on account of wrong fixation of pay, submitted that recovery of any amount of the gratuity after retirement of the employee(s), are more disadvantageous position to them in comparison to those, who are in service. He, further submitted that the petitioners are not the guilty of any misrepresentation or fraud with regard to the excess payment rather the salary of the petitioner was fixed by the respondents and duly affirmed by the District Accounts Officer. Thus, the petitioners are not held to be responsible. All the more, the fixation was made way back in the year 2010 itself

and after enjoying the said fixation for a long span of time during the entire service period, the recovery of the alleged excess amount from the pension is out-and-out bad in law and also against the mandate of the Apex Court as well as by this Court. Much reliance has been made on the judgments rendered by the Apex Court in the case of **Thomas Daniel v. State of Kerala & Ors. [Civil Appeal No. 7115 of 2010], State of Punjab & Others v. Rafiq Masih (White Washer) [(2015) 4 SCC 334**. Further reliance has been made on a judgment rnedered by this Court in **Umesh Prasad Singh & Another v. The State of Bihar & Others [C.W.J.C. No. 10900 of 2022]**.

15. This Court has heard the submissions advanced on behalf of the respective parties and meticulously perused the materials available on record.

16. The question posed before this Court is only confined to the legality of the action by the respondents in making recovery of an excess amount from the gratuity of the petitioners.

17. From the materials available on record, it is evident that alleged excess amount was paid to the petitioners on account of wrong fixation of pay-scale, which took place in the year 2010 itself. It is also the fact that the aforesaid fixation had been approved by the District Accounts Officer, Gaya

whereupon the petitioners have been accorded stipulated pay-scale. Further, it is not the case of the respondents that the excess payment made to the petitioners was on account of any misrepresentation or fraud on the part of the petitioners. Admittedly, the excess payment was made due to mistake in interpreting the Government Resolution/Circular and its applicability.

18. So far the contention of the respondents that the petitioner in CWJC No. 13626 of 2022, who had been functioning as Drawing and Disbursing Officer got his pay erroneously fixed in the higher pay scale is not quite persuasive for the simple reasons, that the Drawing and Disbursing Officer is not the competent authority to fix the pay scale, rather the same was to be accorded after proper verification and approved by the concerned District Accounts Officer. Had there been any anomaly in the pay fixation, there could be some case for the respondents to contend that necessary facts were concealed by the petitioner in order to extend undue benefit to him, thus warrants, disciplinary action, but no such allegation has been levelled.

19. The issue, in relation to recovery of excess payment from retired employees was considered in various cases, wherein the Highest Court of the Land has consistently

held that if excess payment was not made on account of any misrepresentation or fraud on the part of the employee and/or such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation or rule/order, which is subsequently found to be erroneous, no order for recovery could be made from the retirement benefit(s).

20. In the case of **Thomas Daniel (supra)**, while considering the identical issue, the Apex Court has taken note of various judgments, including **Sahib Ram v. State of Haryana and Others [1995 Supp (1) SCC 18; Col. B.J. Akkara (Retd.). v. Government of India and Others (2006) 11 SCC 709; Syed Abdul Qadir v. The State of Bihar and Others [(2009] 3 SCC 475]** and **State of Punjab & Others (supra),** has held that the excess payment was made due to mistake in interpreting Rules, which was subsequently pointed out by the Accountant General and thus any attempt to recover the said increments after passage of ten years of the retirement is unjustified.

21. It would be worth benefiting to state here that in the case of **Rafiq Masih (supra)** the Hon'ble Court while examining the validity of an order passed by the State to recover the excess amount of what was due or wrongly paid in excess of

their entitlements without any fault or misrepresentation on the part of the employees, postulated, certain situation of hardships caused to an employee and disallowed the recoveries by the employers. It was held, thus:

> ***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.*

22. The reliance of the respondents/State on the judgment rendered by the Apex Court in **High Court of Punjab & Haryana and Others (supra)**, holding, *inter alia,* that the

officer furnished an undertaking while opting for the revised pay-scale, is bound by the undertaking, would not be applicable in the facts of the present case as the fixation of pay in Pravaran Vantenman or Graduate Trained Teacher Scale was done way back in the year 2010-12 and the petitioners had never been placed on notice that any payment found to have been made in excess, would be recovered. Any notice or undertaking after retirement of the employee would not empower the employer(s) to get the error committed by them rectified after superannuation of the employee.

23. In view of the settled legal position and having perused certain situation of hardships, wherein recoveries would be impermissible in law, the case of the petitioners, obviously falls in condition/situation No. (ii) and (iii), as postulated by the Apex Court, in the case of **Rafiq Masih (supra)**. Thus, this Court finds substance in the submission of the petitioners and accordingly the action of the respondent(s) deducting the excess paid amount from the sanctioned amount of gratuity is, per se, illegal and held to be unsustainable.

24. Accordingly, the impugned Memo No. 10/Pen100522102258/202211101853PO dated 17.06.2022 as well as the letter dated 02.08.2022 issued under the signature of District Program Officer (Estb.), Gaya, to the extent whereby the alleged

excess amount has been recovered from the sanctioned amount of gratuity of the petitioners are hereby set aside.

25. Respondents authorities are directed to restore the deducted amount of gratuity to the petitioners preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

26. Accordingly, both the writ petitions stand allowed with the aforesaid direction and observation.

(Harish Kumar, J)

shivank/rohit

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.01.2024
Transmission Date	NA