IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15874 of 2022

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Sanju Devi wife of Late Surendra Kumar Resident of Maranpur, Braham Sthan, Naili Road, Gaya-823001.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary Human Resources Department, Bihar, Patna.
3. The Accountant General, Birchand Patel Path, Bihar, Patna.
4. The District Programme Officer (Establishment) Gaya.
5. The District Education Officer, Gaya.
6. The Headmaster-cum-D.D.O. Middle School Bodhgaya, Gaya.
7. Treasury Officer, Gaya, District- Gaya.
8. District Provident Fund Officer, Gaya, Bihar.
9. Director, Provident Fund, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prakash Chandra Gupta, Advocate
For the State	:	Mr. Madhaw Pd. Yadaw, GP-23
		Ms. Meera Singh, AC to GP-23
For the A.G.	:	Mr. Ram Kinker Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 29-08-2023

Heard Mr. Prakash Chandra Gupta, learned counsel appearing on behalf of the petitioner; Mr. Madhaw Prasad Yadaw, learned GP-23 assisted by Ms. Meera Singh, learned AC to GP-23 appearing on behalf of the State and Mr. Ram Kinker Choubey, learned counsel for the Accountant General, Bihar.

2. The instant writ petition has been filed by the petitioner (Smt. Sanju Devi W/O Late Surendra Kumar) to

quash the office order dated 26.08.2022 issued by District Programme Officer (Establishment), Gaya by which the Treasury Officer, Gaya was instructed to deduct Rs. 7,21,874/- from the total amount of Rs. 20,00,000/- authorised to her in gratuity.

3. Learned counsel appearing on behalf of the petitioner submitted that the Accountant General Office has issued authority of pension and gratuity in favour of the petitioner vide Authority No. pen280622102662/202212102067p0 in the light of sanction order no. 801 dated 13.06.2020 received from District Programme Officer (Establishment) Gaya. So far as the matter of encashment of un-utilised earned leave is concerned it is to mention that to make payment of Rs. 8,90,800/- on account of un-utilised earned leave is an administrative matter and related to the concerned department. Payment of amount of group insurance is also concerned with the department. The respondent has written a letter to the concerned department raising the grievances of the petitioner vide letter no. PENSION-10/2022-23/2430 dated 15.12.2022 and requested to inform the office of

answering respondent if it needs to be acted upon regarding the petition.

4. Learned counsel further submitted that the respondent no. 4 has admitted in the counter affidavit that the husband of the petitioner had died in harness on 26.12.2021 and it was on account of erroneous fixation of payment which was detected on 08.03.2019 that from 21.09.2006, the petitioner was paid higher on account of incorrect fixation of pay scale and proceeded to recover from the gratuity of the petitioner in the year 2022 after a delay of nearly 18 years. He specifically submitted that no action was taken against the deceased employee while he was in service. Admittedly, the respondent/s for such illegal act has taken plea that in compliance of the resolution no. 8921 dated 07.12.2018 and in accordance with the Finance Department Letter No. 577 dated 10.11.2020, the excess payment was required to be made from the pensionary benefit and the same has been deducted. He further submitted that the circular which has been taken as an aid to deduct from the gratuity payable to the deceased employee was not applicable during the period the alleged excess

amount was paid to the petitioner on account of salary. He further submitted that law is well settled in this regard that the employees can be penalized for their fault when they have misrepresented or misappropriated any government money, but not in the case as is one in which case the authorities themselves have realised that due to incorrect fixation of pension on account of excess pay scale given to the husband of the petitioner on account of senior selection grade and also minimum stage under schedule 2 to the teacher of Rajyakrit School, the respondents are themselves responsible for that.

5. Learned counsel appearing on behalf of the State submitted that the objection was raised by the Accountant General, Bihar and after that the authorities had proceeded to take action for deducting amount of Rs. 7, 21, 874/- from the gratuity of the petitioner. The petitioner is being regularly paid pension without fail each month, however, the State should not be made to suffer financially on account of incorrect fixation of pension.

6. Having heard the rival submission made on behalf of the parties. The husband of the petitioner had died

in harness in the year 2021. It is admitted by the respondent/s that pay scale was fixed, in the year 2006, on account of giving the benefit of senior selection grade to the petitioner due to stagnation on the same post and the authorities have realised that the benefit granted is also not in accordance with the several circular of the State Government which has been issued much later to the year 2006 as would appear from 'Annexure- A and B' to the counter affidavit filed on behalf of the State. Any benefit which has been granted as a result of financial upgradation by giving the benefit of selection grade cannot be treated to be the regular promotion. The order of recovery in such cases has been treated to be illegal and misconceived by the Apex Court in case of ***Amresh Kumar Singh vs. State of Bihar*** reported in ***(2023) SCC OnLine SC 496.*** The respondents have also admitted that petitioner has not misrepresented or misappropriated any government money rather the authorities have accepted that the incorrect fixation has been done on the part of the concerned respondent. This Court finds that no recovery can be made from the gratuity after lapse of more than 18 years, the benefit which was granted to the deceased employee in the year 2006. In this regard, reliance can be placed on the judgment of the Apex Court as decided in the case of ***Sahib Ram v. State of Haryana***, reported in ***1995 Supp (1) SCC 18***, wherein it was held as follows:

> ***"5. … Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."***

7. Accordingly, order contained in Letter dated 26.08.2022 communicated by the District Programme Officer (Establishment), Gaya is set aside.

8. The District Programme Officer (Establishment), Gaya is directed to forthwith return back entire amount of gratuity, which has been recovered from the petitioner within a period of four weeks from the date of communication of this order, without delay.

9. In case, the petitioner finds that the District Programme Officer (Establishment), Gaya, delays the matter in returning back the amount of gratuity which has been recovered in any manner beyond the period of four weeks, the petitioner is at liberty to take appropriate legal action against the District Programme Officer (Establishment), Gaya, in accordance with law.

10. With above observation and direction, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/Nilmani

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.08.2023
Transmission Date	N/A