IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15752 of 2022

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Arvind Kumar Singh Son of Late Ram Pratap Singh Resident of Village-Bihat, Police Station-Barauni, District-Begusarai.

... ... Petitioner/s

Versus

1. The State of Bihar the Secretary, Agriculture Department, Govt. of Bihar, Patna.
2. The Joint Secretary, Agriculture Department, Govt. of Bihar, Patna.
3. The Deputy Director (Agronomy) Seed Analysis, Bihar, Patna.
4. The Incharge Officer, Finance Department (Personal Claim Fixation Cell) Bihar, Patna.
5. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar, Adv.
For the State	:	Mr. Dhurjati Kr. Prasad, GP-14

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 01-12-2023

Heard Mr. Mukesh Kumar, learned counsel appearing on behalf of the petitioner and Mr. Dhurjati Kumar Prasad, learned counsel for the State. Learned counsel for the Accountant General is also present

2. The petitioner who superannuated on 28.02.2021 from the post of Assistant Director, Agriculture, has filed the present writ petition under Article 226 of the Constitution of India seeking a direction to ensure payment of unutilized earned leave of total 300 days along with statutory interest.

3. At the outset, learned counsel for the petitioner

submits that during the pendency of the writ petition, the Incharge Officer, Finance Department, Bihar, Patna issued a communication bearing Memo No. 655 (22) dated 02.03.2023 addressed to the Drawing and Disbursing Officer-cum-Deputy Director (Agronomy) Seed Analysis, Bihar, Patna whereby the authority letter with regard to unutilized earned leave has been issued but surprisingly an amount of Rs.42,560/- has been deducted from the total amount of Rs. 6,79,680/-.

4. The petitioner being aggrieved filed an Interlocutory Application bearing I.A. No. 1 of 2023 assailing the afore-noted order to the extent whereby deduction has been made. While assailing the part of the order, Mr. Mukesh Kumar, learned counsel for the petitioner submits that admittedly the petitioner superannuated on 28.02.2021 and after two years of his superannuation, the impugned deduction has been made vide Memo No.655(22)dated 02.03.2023. That apart, the respondents themselves are not very much clear as to how the amount of Rs.42,560/- has been paid in excess of the entitlement to the petitioner as *vide* Letter No.2270 dated 12.04.2022, a show cause was issued wherein it has been stated that the petitioner has been paid excess salary from 05.03.2010 to 28.02.2021. Conversely, on the other hand, the Deputy Director (Agronomy)

Seed Analysis, Bihar, Patna vide letter No.324 dated 04.10.2021 has intimated the Finance Department that the excess payment under the head of salary has been made to the petitioner for the period 01.04.2018 to 28.02.2021. He next submittted that admittedly this is not the case of the respondents that the amount in question has been paid to the petitioner on account of any misrepresentation or fraud on the part of the petitioner, inasmuch as any recovery from the retiral benefits is contrary to the mandate of the Hon’ble Supreme Court. Reliance has been made on a judgment of the Hon’ble Apex Court in the case of ***State of Punjab Vs. Rafiq Masih*** reported in ***2015(4) SCC 334.***

5. On the other hand, learned counsel for the State vehemently submits that if there is any shortcoming in the show cause whereby the petitioner has been asked to explain the position, the same may be set aside and let a direction be given to the Department to issue a fresh show cause notice making specific charge. He next submits that so far the reliance made on behalf of the petitioner on the judgment of the Hon’ble Apex Court in the case of ***State of Punjab Vs. Rafiq Masih*** (supra) is concerned, the same would not be applicable in this case as the petitioner was an officer of the Agriculture Department and he was knowing all the facts with regard to his entitlement and

thus any amount received in excess to his entitlement would always be unjustified and unreasonable apart from unjust enrichment.

6. Having heard the learned counsel for the parties and taking note of the impugned order to the extent whereby an amount of Rs.42,560/- has been deducted, this Court finds that no specific charge is read out against the petitioner as to how the amount has been paid in excess of the entitlement to the petitioner and if the same has been paid, then for which period. It cannot be lost sight of the fact that the petitioner had already superannuated on 28.02.2021 and all the impugned exercise of deduction is being made after superannuation of the petitioner, moreover, there is no allegation of any fraud or misrepresentation on the part of the petitioner, which had led the competent authority to commit the mistake of making excess payment.

7. In view of the afore-noted facts, this Court finds substance in the submission of the learned counsel for the petitioner and accordingly, the letter contained in Memo No. 655 (22) dated 02.03.2023 to the extent whereby an amount of Rs.42,560/- has been deducted from the unutilized earned leave is hereby set aside. The respondent no. 4 is directed to return the

deducted amount of Rs.42,560/- preferably within a period of four weeks from the receipt/production of a copy of this order.

8. The writ petition stands disposed of.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.12.2023
Transmission Date	