

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1905 of 2018

Md. Wazid Ali Ansari son of Late Abdul Raquib resident of village -
Uparahauli, Tola Kharpar, Police Station Paraiya, District - Gaya.

... .. Petitioner/s

Versus

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

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 2239 of 2018

Kunj Bihari Choudhary Son of Ram Kishun Choudhary, Resident of Village-
Pirbigha, P.S.- Chandauti, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. Director, Consolidation, Bihar, Patna.
4. Joint Director, Consolidation Head Quarter, Bihar, Patna.
5. Deputy Director, Consolidation, Gaya.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 1905 of 2018)

For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate

For the Respondent/s : Mr. Raj Kishore Roy, GP 18

(In Civil Writ Jurisdiction Case No. 2239 of 2018)

For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate

For the Respondent/s : Mr. Raj Kishore Roy, GP 18

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

6 15-09-2023

Heard the parties.



2. The present petitions have been preferred for the 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 petitioners 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 IIIrd 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 facts, in short, is/are incorporated herein:-

4. The petitioners were appointed on 03.07.1982 and 09.05.1979 as Draftsman in the Department of Consolidation by the competent authority and after serving the Department, they superannuated on 30.11.2013 and 31.01.2017. After superannuation, petitioners received post retiral benefits except benefit of IIIrd ACP.

5. It is submitted by the petitioners that they were granted benefits of first ACP on 9.8.1999 and second ACP on 3.7.2006 (Md. Wazid Ali Ansari) and 1999 and 2009 (Kunj Bihari Choudhary) but third ACP has not been granted without any valid reason.



6. It is further submitted that in grant of ACP, they did not misrepresented any fact but the same was/were granted on the basis of circular/ order of the Finance Department dated 28.07.2005 which provided the revised pay-scale of the Draftsman as Rs.5000/- to 8000/-. Accordingly, they received the benefits of IInd ACP granted by the respondents as per the circular/order of the Finance Department but did not received the benefits of IIIrd ACP.

7. From the perusal of the aforesaid order issued by the Finance Department, it appears that for the Draftsman category-1 Rs.5000/- to 8000/- has been authorized as revised pay scale by the Finance Department which is applicable to the petitioner and on that basis his pay scale has been fixed and benefit of ACP was granted which has been received by the petitioners without any objection from any corner.

8. Learned Counsel for the petitioners submit that after their retirement, they were served with a letter no. 358 dated 02.06.2017 issued under the signature of Joint Director Consolidation (Headquarter), Bihar, Patna by which it was incorporated that they were entitled to 4000-100-6000 effective on 01.01.1996 but the Regional Consolidation Offices provided them the scale of 4500-125-7000 and 5000-150-8000 as a result



whereof they received excess amount and thus immediate steps be taken for realization of the amount.

9. Learned Counsel for the petitioners submit that that the office granted in the said pay scale and there was no misrepresentation on their part and as such, the order of realization, four years after their superannuation is/are bad in law.

10. Learned counsel took this Court to an order of the Hon'ble Apex Court in **State of Punjab and Ors. vs Rafiq Masih and Ors.** reported in **(2015) 4 SCC 334** in which it was held that if there is no misrepresentation and the employees are/were on the verge of retirement, the realization cannot be done. He has also cited a case of Patna High Court in **Daya Shankar Singh vs The State of Bihar** reported in **2010 (3) PLJR 220** with reference to paragraph 23 in support of the case.

11. Learned State Counsel with the help of counter affidavit submits that they being the Draftsman similar situate persons whose name appear in the order in question being the Draftsmen, they were entitled to the pay scale of 4000-100-6000 but wrongly granted by the Regional Offices the different pay scale as a result whereof they enjoyed the benefits and now when the anomaly has been detected, an order has been passed



rectifying the defect, they were entitled to only 4000-6000 effective 01.01.1996 and as such, the writ petition is fit to be dismissed.

12. He further submits that a general guidelines was earlier issued in 2012 itself regarding the entitlement of Draftsman in the cadre of 4000-6000 still the excess payments were made.

13. Having gone through the facts of the case, the documents on record as also the submissions put forward by the learned Counsel for the parties, this Court finds force in the submissions put forward by the learned Counsel for the petitioners.

14. When the petitioners received the pay scale, as aforesaid, it is not the case of the State that the same was extended to them on their misrepresentation.

15. The first and second ACP were granted, they duly retired on 30.11.2013 and 31.01.2017 and in that backdrop, the direction for realization of amount subsequently on 02.06.2017 in the light of the order of Hon'ble Apex Court in **State of Punjab and Ors. vs Rafiq Masih and Ors.** (supra) as also **Daya Shankar Singh** (supra) cannot be allowed.

16. This Court would like to incorporate paragraph 23



of the order of **Daya Shankar Singh** (supra) which read as follows:-

23. Thus, the last question that remains is with regard to recovery. In my view, this issue has to be decided in favour of the petitioner. Admittedly, petitioner played no part in getting the promotion wrongly. Authorities fully applied themselves and took an erroneous view of the matter. The petitioner was given to understand that promotion was duly granted to him and he was entitled to it. He enjoyed the pay and perquisites. Now after more than 10 years, he is being told that I have committed a mistake in granting you promotion and because of that mistake you are now required to make good the losses incurred by State in this regard. In my view, this would be wholly inequitable. A substantial amount of money would be recoverable from the petitioner for no fault of his and the petitioner would be made to suffer for a long time even if installments are fixed for recovery. Petitioner is being made to suffer for fault of another. That surely cannot be permitted. This aspect of the matter has been fully dealt with by a Full Bench of this Court recently in the case of **Ram Binod Singh & Others vs. Bihar State Electricity Board & Others** since reported in 2007(3) PLJR 398. In the case of **Union of India & Another vs. Narendra Singh** (supra), similar issue had arisen. The Apex Court, noticing that the erroneous promotion continued for over 17 years, held and directed that the excess salary already paid would not be directed to be recovered though they



held that restoration of the correct pay scale would have to be made but prospectively that is it would have an effect on his pensionary benefit as he was to retire in a few days. In my view, this is the correct position where a mistake is corrected and the mistake was not actuated by the petitioner then rectification thereof is permissible but should normally be done prospectively so as to avoid undue hardship being caused to a person without the person being at fault.”

17. A co-ordinate bench while directing the State to file counter affidavit, on 09.03.2018, has stayed the recovery of the amount from the two petitioners.

18. In the aforementioned circumstance, the writ petition is allowed. The order in question i.e. the letter no. 358 dated 02.06.2017 issued by the Joint Director, Consolidation (Headquarter), Bihar, Patna so far as the same relates to the two petitioners stand quashed.

(Rajiv Roy, J)

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