

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13331 of 2017

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Rama Shankar Yadav Son of Late Sita Ram Yadav, Resident of Village-
Bishanpur, P.O.- Mirjapur, P.S. and District- Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Finance Department, Government of Bihar, Patna
2. The Deputy Inspector General of Bihar, Military Police North Central, Muzaffarpur.
3. The Commandant of B.M.P. -II, Jamui.
4. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Jha-3, Advocate Mr. Vikash Kumar Jha, Advocate
For the State	:	Mrs. Anuradha Singh – SC-21 Mrs. Nutan Kumari Sharma, AC to SC-21
For the A.G.	:	Mr. Raj Nandan Prasad, Advocate Mr. Vishesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 04-04-2023

Heard Satish Chandra Jha-3, learned counsel appearing on behalf of the petitioner; Mrs. Anuradha Singh, learned SC-21 for the State and Mr. Raj Nandan Prasad, learned counsel for the Accountant General.

2. Learned counsel appearing on behalf of the petitioner informs this Court that the original petitioner has died during the pendency of the present writ petition on 27.04.2022 and a substitution petition is being filed by Interlocutory Application but the same has not been numbered yet.



3. Learned counsel for the petitioner seeks permission to file the hard copy of the substitution petition in the Court. The same is accepted and directed to be kept on record.

4. For the reason assigned in the substitution petition and the affidavit, the name of the petitioner, who died on 27.04.2022 is expunged and in place of original petitioner, the names of his heirs named in paragraph no. 2 of the I.A. are substituted.

5. Necessary correction/amendment be made in cause title by hand.

6. Interlocutory Application stands disposed of.

Re: CWJC No. 13331 of 2017

6. Petitioner is aggrieved by impugned order dated 20.04.2013 as well as order dated 02.07.2014 contained in Memo no. 777 and by order dated 08.01.2015 contained in Memo No. 08 by which a sum of Rs. 1,85,000/- was adjusted from the gratuity payable to the original petitioner on the ground that original petitioner had illegally availed excess leave out of his earned leave which was found equivalent to 152 days' salary and accordingly, the above amount was adjusted from the gratuity of the petitioner in view of his non-entitlement to the same.

7. Learned counsel appearing on behalf of the petitioner



submitted that after retirement of the original petitioner, all the reitral benefits were calculated and paid according to the entries made in his Service Book but because of wrong calculation of earned leave and non calculation of half pay earned leave, a sum of Rs. 1,85,000/- (Rupees One Lakh and Eighty Five Thousand) was directed to be deducted/adjusted by the respondent no. 3- The Commandant of B.M.P.-II, Jamui out of the payable provisional gratuity amount of Rs. 5,43,020/- (Five Lakhs Forty Three Thousand and Twenty) vide order dated 20.04.2013 and vide order contained in Memo No. 777 dated 02.07.2014 and affirmed by order of the Appellate Authority vide order dated 08.01.2015 contained in Memo no. 08.

8. The order of recovery was passed ex-parte against the original petitioner and the original petitioner had filed appeal before the Appellate Authority. The Appellate Authority allegedly had failed to appreciate that petitioner had not misrepresented or misappropriated. In support of his claim, the petitioner submitted that from time to time, leave was sanctioned to the original petitioner as claimed by him therefore, in absence of any adverse order against the original petitioner or the original petitioner having absented without informing his authority, the order of recovery after the petitioner has retired



from service is bad in law.

9. Learned counsel for the petitioner by referring to several provisions of Bihar Police Manual, submitted that in the memo of appeal he has made specific statement that the order of recovery is bad as the calculation has not been made properly in accordance with Rule 232 and 234 of the Bihar Service Code as well as Rule 781(1) (2) and (3) of the Bihar Police Manual which prescribe for commutation of half pay earned leave into full pay earned leave. He further refers to clarification made by the State Government contained in F.D. Memo No. PC. 1-2130F (Annexure-3 series) where procedure for calculation of earned leave and half pay earned leave to be commuted has duly been prescribed.

10. On these grounds, learned counsel submitted that the respondent no. 2- the Appellate Authority has not considered the case of the petitioner in proper prospective as per the rule prescribed for calculation and without application of his judicial mind has rejected the appeal. Petitioner, thereafter, made several representation before the Inspector General of Police and Director General of Police against the aforesaid order passed by the Appellate Authority contained in Memo No. 8 dated 08.01.2015 by which the rightful claim of earned leave made by



the petitioner has been directed to be recovered on the basis of arbitrary order. Learned counsel further submitted that the law is well settled in case of ***State of Punjab and Ors. v. Rafiq Masih (White Washer) and Ors.*** reported in ***(2015) 4 SCC 334***. In support of his claim that no recovery can be made from Class-III and Class-IV employees after their retirement. In the present case, the authorities have not found that the petitioner has misrepresented or misappropriated any amount wrongfully rather the authorities themselves are responsible for incorrect calculation of commuting the earned leave, which has already been sanctioned to the petitioner. Learned counsel has relied on sub-clause 2 of Paragraph no. -18 of the judgment.

11. *Per contra*, learned counsel appearing on behalf of the respondent submitted that the order of recovery contained in Memo No. 777 dated 02.07.2014 is justified and consequential order thereafter are in accordance with law. In fact, the petitioner was found to have availed excess leave, which was quantified to be equivalent to 152 days' salary and accordingly a sum of Rs. 1,85,000/- (One Lakh Eighty Five Thousand Only) was adjusted from the gratuity by way of adjustment and not by way of recovery.

12. The petitioner had preferred appeal against the order



of recovery/adjustment and the appellate authority has taken into consideration the entire facts of the case as well as the relevant rules governing the commutation of earned leave, therefore, the claim of the petitioner that he was not given any opportunity to be heard or no calculation chart was furnished to him is not sustainable. The petitioner was served with Memo No. 1188 dated 22.09.2014 which contained calculation chart and the same has been brought on record by way of 'Annexure-A & B'. The order of recovery does not require any interference of this Court.

13. Having heard the rival submission of the parties, the rules governing commutation of leave is contained in Rule 232 and 234 of the Bihar Service Code, which is reproduced hereinafter.

“ 232. Half pay leave will be earned without any restriction to the limit of accumulation, in the course of service, at the following rates, for each completed year of service:-

(a) 20 days in the case of a Government servant in superior service; and

(b) 15 days in the case of a Government servant in inferior service.

Such leave can be availed of on private affairs as well as on medical certificate. There will be no limit on the half pay leave that can be availed of at a time on medical certificate and this will apply even when such leave is taken preparatory to retirement:

Provided that no half pay leave may be granted unless the authority competent to sanction leave has reason to believe that the Government



servant will return duly after his expiry.

EXPLANATION 1- The term “completed year of service” used in this rule means continuous service of specified duration under the Government of Bihar or the late Government of Bihar and Orissa, and includes period spent on duty as well as on leave (Including extraordinary leave).

EXPLANATION 2 – Half pay leave in respect of any completed year of service during which the service rendered by a Government servant has been partly in a superior and partly in an inferior service, should be calculated on pro rata basis separately in respect of superior service and inferior service and added up. The fraction, if any, present in the total or half pay leave for the particular year should be ignored if it is less than half, or reckoned as one day if it is half or more.

234. At his option, a Government servant can have the half pay leave due converted into half the amount of full pay leave. Such converted leave will be termed “commuted leave”. It will be granted only on medical certificate subject to a limit of 180 days in the case of a Government servant in superior service and 120 days in the case of a Government servant in inferior service, during the entire service.

Commuted leave may be combined with earned leave but such combination will be limited to 180 days, whether such leave is availed of in India or out of India, in case of a Government servant, in superior service, and 120 days in the case of a Government servant in inferior service. The maximum limit of 180 days in case of a Government servant in superior service and 120 days in the case of Government servant in inferior service, will apply also to the combination of earned leave, vacation and commuted leave:

Provided that no commuted leave may be granted under this rule, unless the authority competent to sanction leave has reason to believe that the Government servant will return to duty on its expiry.”

14. The record reveals that the petitioner was not given an opportunity before the authorities proceeded to recovery/adjust the total amount of Rs. 1,85,000/- from the total amount of



gratuity payable to the petitioner. The petitioner was forced to prefer appeal and the petitioner had demanded for calculation chart but the authorities failed to provide the same to him. The petitioner has substantiated his claim that no recovery can be made after the leave having been sanctioned by the respondents themselves. The leave was calculated in accordance with the provision of Rule 232 and 234 of the Bihar Service Code read with Rule 781 (1) (2) and (3) of Police Manual which prescribe for calculation of leave.

15. This Court does not find it proper to go into the legality or illegality of the order passed for recovery by the respondent no. 3 confirmed by the order passed by the appellate authority. The excess amount which has been sanctioned by the authorities is admittedly due to incorrect calculation of the earned leave admissible to the petitioner could have recovered within short span of time and not after substantial delay after superannuation. The law is well settled in case of *State of Punjab and Ors. v. Rafiq Masih (White Washer) and Ors.*

16. The impugned order of recovery contained in Memo No. 777 dated 20.04.2013 and appellate order contained in Memo No. 08 dated 08.01.2015 are hereby quashed.

17. The respondent no. 3 is directed to refund the entire



amount of Rs. 1,85,000/- (One Lakh Eighty Five Thousand) in
favour of the substituted petitioners, who are legal heirs of the
original petitioner expeditiously in accordance with law.

18. Accordingly, the present writ petition is allowed.

(Purnendu Singh, J)

Niraj/Nilmani

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	13.04.2023
Transmission Date	N/A

