IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21513 of 2019

==

Om Prakash, son of late Jagdish Prasad, resident of Village- Ujan, Ward No. 9, Post Office- Lohna Road, Police Station- Sakatpur, District- Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Director General of Police, Bihar, patna.
3. The Inspector General of Police, Bihar Police Radio Organization, Rajbansi Nagar, patna.
4. The Superintendent of Police, Wireless, Bihar Police Radio Organization, Rajbansi Nagar, Patna.
5. The Principal Secretary, Department of Finance, Bihar, patna.
6. The Senior Accounts Officer, Office of the Accountant General, Bihar, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Md. Shamimul Hoda, Adv.
For the State	:	Mr. Sheeo Shankar Prasad (Sc8)
For the Accountant General	:	Mr. Arun Kumar Arun, Adv.

==

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

9 21-06-2023 Heard Md. Shamimul Hoda, learned counsel appearing on behalf of the petitioner, Mr. Sheeo Shankar Prasad, learned counsel appearing on behalf of the State and Mr. Arun Kumar Arun, learned counsel appearing on behalf of the Accountant General.

2. The petitioner, who has retired from the post of Assistant Fitter had filed the present writ petition against the order of recovery of total amount of Rs. 1,56,263/- have been made from his pensionary benefits after much delay. The

petitioner was Class-IV employee of Bihar Police Radio Organization, Rajbansi Nagar, Patna, and is represented by respondent no. 4.

3. Learned counsel appearing on behalf of the petitioner submitted that the 2nd A.C.P. benefit and benefit of increment was given to the petitioner allegedly within a period of six months, which resulted into recovery of an amount of Rs. 1,56,263/- from retiral dues of the petitioner. Incorrect grant of the 2nd ACP cannot be held that the petitioner had deliberately mis-represented or mis-appropriated with the said amount. The respondents have accepted their fault that the benefit of increment was given within a period of six months against the Government circular. The error was detected after much delay and the petitioner cannot be held liable for any laches, which is on the part of the respondents.

4. Per contra, learned counsel appearing on behalf of the respondents submitted that recovery is sustainable in light of the Government Circular and the objection raised by the Accountant General Office vide its letter dated 20.02.2017. It was found that the fixation of annual increment from 01.07.2006 was against rules which requires a time lag of minimum six months between two consecutive increments. In case of the

petitioner increment given after 2nd A.C.P. on 14.06.2006 in pay band Rs. 13,500/-, grade pay of Rs. 4200/- and annual increment given on 01.07.2006 in pay band of Rs. 14,040, grade pay of Rs. 4200/- admittedly within six months, hence in the light of the objection raised by the Accountant General's letter, a revised office order no. 236/2017, dated 23.03.2017 was issued, and as a result of which, the pay scale of the petitioner was refixed in pay band of Rs. 14040. The benefit which result due to incorrect pay fixation, excess payment to the tune of Rs. 1,56,263/- was paid to the petitioner, is only recoverable.

5. Heard the parties.

6. Having regard to the facts of case as well as the rival submissions of the parties and the pleadings made in the writ petition and the counter affidavit filed on behalf of respondent no. 4, it appears that respondent no. 4 has admitted that incorrect pay scale was given to the petitioner against the Government Circular, which mandates that no two consecutive increments can be given to the petitioner within a period of six months, which led to the recovery of excess payment to the tune of Rs. 1,56,263/- from the petitioner.

7. It is apparent from the aforestated facts that the petitioner did not misrepresent or commit any fraudulent act to

receive the excess payment. The said excess payment to the tune of Rs. 1,56,263/- (One Lakh Fifty Six Thousand Two Hundred Sixty Three) was made by the authorities upon wrong application of the rules and regulations in force. In similar circumstances the Hon'ble Apex Court has held such recovery to bad and directed for refund of the recovered amount as held in the case of ***Syed Abdul Qadir vs. State of Bihar*** reported in ***(2009) 3 SCC 475***. The relevant paragraph is reproduced hereinbelow:-

> *"**59.** Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar.*

Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

8. Another aspect which needs to be dealt here is the inordinate and unreasonable delay in detecting the excess payment made to the petitioner. The undisputed fact is that payments were made in the year 2006, the petitioner superannuated in 2016 and the order of recovery from the pension was issued on 06.04.2017. It is a settled law that master servant relationship get severed upon retirement and the employer state can only proceed in accordance with Bihar Pension Rules as far as payment of pension is concerned Rule 43(b) provides one such scenario in which pension may be withheld or withdrawn. However, the proviso to Rule 43(b) restricts the powers of the State Authorities to withhold/recovery pension only with respect to an event which took place not more than four years before the date of proceeding/order. The Hon'ble

Apex Court in ***Sushil Kumar Senghar (2014) 16 SCC 444*** has held that any salary paid by mistake to an employee can not be recovered post retirement contrary to the time frame provided by Government order/rules.

9. Lastly, it appears from the record that no notice or reasonable opportunity was granted to the petitioner before issuance of the impugned order, this omission on part of respondent authorities is violative of principle of natural justice which is the touchstone of any administrative action. Thus the impugned order cannot sustained on account of being violative of principle justice too.

10. It is admitted that the petitioner payments were made in the year 2006, he retired on 31.12.2016, and the order of recovery was passed on 06.04.2017. It is an undisputed fact that the petitioner was Assistant Fitter which is Class-IV post. Law is well settled by the Apex Court that if any excess payment has been made to the Class-IV employee, due to laches of the employer, the same should have been deducted and rectified within a very short span of time. In the present case, the authorities have detected nearly after delay of ten years and without giving any opportunity to the petitioner, an amount of Rs. 1,56,263/- has been recovered from the account of the

petitioner.

11. The case of the petitioner is covered by the Judgment passed by the Apex Court in ***(2015) (4) SCC 334 (State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.)*** operating part of the said Judgment is reproduced as under:-

> *"**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."

11. The petitioner was given the benefit of increment in the year 2006, much before his date of retirement which same was detected in year 2017, to have been wrongly paid one year after his retirement, this Court finds the action of the respondents in recovery of the above mentioned amount to be illegal. The respondents are directed to refund the amount which has been recovered from the account of the petitioner.

12. The writ petition is accordingly allowed.

(Purnendu Singh, J)

pravinkumar/-

U			