IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17829 of 2022

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Pramod Kumar Dutta son of Late Rajeshwar Prasad Dutta, Resident of 302, Amar Vihar Apartment, Road No. 3J, New Patliputra Colony, P.S. Patliputra at and District- Patna at present residing at Justice Raj Kishore Path, New Area Kadamkuan, P.S. Kadamkuan at and District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Transport Department, Government of Bihar, Patna.
2. The Principal Accountant General (A and E), Bihar at Patna.
3. The District Magistrate, Darbhanga.
4. The District Transport Officer, Darbhanga.
5. The District Treasury-cum-Provident Fund Officer, Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Singh, Sr. Advocate
		Mr. Bhola Kumar, Advocate
		Mr. Ashish Sinha, Advocate
		Mr. Ravi Shankar, Advocate
For the Respondent/s	:	Mrs. Anuradha Singh, SC-21
		Mr. Kumar Samarjeet Singh, AC to SC-21
For the Accountant General	:	Mr. Raj Nandan Prasad, Advocate
		Mr. Vishesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

3 22-06-2023 Heard Mr. Alok Kumar Singh, learned senior counsel assisted by Mr. Ravi Shankar, learned counsel appearing on behalf of the petitioner; Mrs. Anuradh Singh, learned SC-21 appearing on behalf of the State and Mr. Raj Nandan Prasad, learned counsel appearing on behalf of the Accountant General, Bihar.

2. Mr. Alok Kumar Singh, learned senior counsel

assisted by Mr. Ravi Shankar, learned counsel appearing on behalf of the petitioner informs this Court that all the retirement benefits have been paid to the petitioner, however, on account of petitioner having not passed Hindi Noting and Drafting Examination, an amount of Rs. 18,02,751/- (Eighteen Lakh Two Thousand Seven Hundred Fifty One) on the direction of Accountant General, Bihar, has been recovered from the salary of the petitioner on account of excess increment made in spite of the fact that petitioner has not passed Hindi Noting and Drafting Examination.

3. Learned senior counsel further submitted that no objection was ever raised by any authority while the petitioner was in service and the increment amount was being credited into the account of the petitioner. Petitioner has not committed any fraud or misrepresentation. The authorities themselves are responsible for crediting excess amount which is later on being deducted after the retirement of the petitioner by the office of the Account General, Bihar.

4. Learned counsel appearing on behalf of the Respondent-State submitted that petitioner is responsible for retaining excess amount even though he was aware of the fact that he has not passed the Hindi Noting and Drafting Examination and this conduct of the petitioner to not informing

his controlling officer that he is not entitled to any increment shows the illegality committed by the petitioner and, therefore, the excess amount which has been withheld from the pensionary benefit of the petitioner is in accordance with law.

5. Learned counsel further submitted that in case of ***Sahib Ram vs. State of Haryana and Ors.*** reported in ***1995 Supp (1) SCC 18*** the Apex Court has clearly laid down that on account of fraud or misrepresentation, the authority can withhold the excess amount which has been paid to the concerned employee. In the present case, admittedly, the petitioner having not informed his controlling officer, the petitioner has mislead the State.

6. Having considered the rival submissions made by the parties as well as the law laid down by the Apex Court and this Hon'ble Court, the fact which can be culled out from the statement made in the writ petition as well as the counter affidavit, it appears that the State have not made any allegation that the petitioner had misrepresented in any manner or had defalcated the amount by indulging in any wrong act. He had not passed the Hindi Noting and Drafting Examination and he was not entitled for yearly increment. The competent authority was responsible to detect that the petitioner was wrongly being

given the benefit of passing of the Hindi Noting and Drafting Examination by giving benefit of yearly increment to the petitioner. The petitioner cannot be held liable for the said incorrect calculation which has been done by the State authorities themselves.

7. This Court also finds that the petitioner had retired on 30.09.2019 and only after getting information from the Accountant General, Bihar that an excess amount of Rs. 18,02,751/- (Eighteen Lakh Two Thousand Seven Hundred Fifty One) has been paid to the petitioner even though the petitioner has not passed the Hindi Noting and Drafting Examination and such benefit could not have been granted to the petitioner. The recovery order was passed during the pendency of the present writ petition and the same was communicated to the petitioner vide Letter No. 274 dated 06.02.2023. The Letter has been brought on record by way of 'Annexure-E' series and the specific statement in support of the said fact has been made in paragraph no. 12 of the counter affidavit filed on behalf of the State.

8. Law is well settled that in case of any incorrect calculation having been made in salary or any benefit which has been granted to an employee during his service period

incorrectly, the same should have been deducted within a very short span of time. The Apex Court in the case of ***State of Punjab v. Rafiq Masih*****,** reported in **(2015) 4 SCC 334.** Relying on paragraph no. 18 of the said judgment the case of petitioner is covered which is reproduced hereinafter:

> ***"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:*
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> *(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."*

9. The action of the respondent in withholding the total amount of Rs. 18,02,751/- (Eighteen Lakh Two Thousand Seven Hundred Fifty One) from the retiral benefits of the petitioner is set aside.

10. Accordingly, the direction contained in Letter No. 274 dated 06.02.2023 is quashed.

11. Accordingly, the present writ petition is allowed.

(Purnendu Singh, J)

Niraj/-
Nilmani/-

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