

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8062 of 2021

=====

Saheb Sharan Das, son of Late Gauri Prasad Das, Resident of New Bangali Tola, BMP- 7, P.S. - Shayak Katihar, District - Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Home Department, Govt. of Bihar, Patna.
2. The Director General, Bihar Military Police, Bihar.
3. The Commandant, Bihar Military Police-12, Saharsa, IRB-2, Camp Katihar, presently Battalion Headquarter at Bhimnagar, Birpur, District- Supaul.
4. The Accountant General of Bihar, Birchand Patel Marg, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Abhay Shankar Singh, Advocate
For the State	:	Mr. Sheo Shankar Prasad, SC-8
		Mr. Anil Kumar, AC to SC-8
For the AG, Bihar	:	Mr. Arun Kumar Arun, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 02-09-2024

Heard Mr. Abhay Shankar Singh, learned counsel for the petitioner, Mr. Anil Kumar, learned counsel for the State and Mr. Arun Kumar Arun, learned counsel for the Accountant General, Bihar.

2. The petitioner superannuated on 31.01.2020 from the post of Hawaldar B.M.P.-12, Saharsa, IRB-2, Camp Katihar, has invoked the jurisdiction of this Court, seeking a direction upon the respondent(s) to ensure payment of all the post retiral benefit(s) as per his last pay drawn @ Rs. 62,020/- in grade pay Rs. 4200/-.

3. Shorn of unnecessary details, learned counsel for



the petitioner contended the relevant facts that during pendency of the writ petition, the petitioner has been accorded all the retiral benefits. However, while making such payment, the official respondents have arbitrarily and illegally recovered an amount of Rs. 1,59,633/-, which is said to have been paid to the petitioner in excess to his entitlement on account of wrong fixation of pay in course of granting benefits under the 1st and 2nd ACPs.

4. Learned counsel for the petitioner adverting to the aforesaid facts, contended that since the petitioner has already superannuated on 31.01.2020, any recovery from his post retiral benefits is in the teeth of the mandate of the Hon'ble Apex Court in the cases of **State of Punjab v. Rafiq Masiah [(2015) 4 SCC 334]** and **Thomas Daniel v. State of Kerala and Others [2022 SCC OnLine SC 536]**. It is next contended that identical issue to that of the petitioner has travelled to the learned Division Bench of this Court in the case of **Surendra Mandal and Others v. The State of Bihar and Others [L.P.A. No. 431 of 2021]**, wherein the learned Division Bench of this Court taking note of the verdict of the Hon'ble Apex Court, in the matter of recovery from retiral benefits, in its penultimate paragraph no.7, has held as follows:

“7. Even, the latest decision in the case of **Thomas Denial vs. State of Kerala and Others,**



2022 Live Law (SC) 438, Apex Court has held that recovery cannot be ordered. Learned counsel for the respondents cited decisions namely **High Court of Punjab and Haryana vs. Jagdev Singh** reported in **(2016) 4 PLJR (SC) 78** and **Syed Abdul Qadir and others vs. State of Bihar and others** reported in **(2009) 3 SCC 475**, the same are not attracted in the present case. In the light of decision passed in L.P.A. No. 270 of 2021 wherein we have considered: **(i) High Court of Punjab & Haryana Vs. Jagdev Singh** reported in **2016 (4) PLJR (SC) 78** **(ii) Chandi Prasad Uniyal and Others vs. State of Uttrakhand and Others** reported in **2012(8) SCC417** **(iii) Union of India Vs. Sri Bijoy Kumar** reported in **2022 (1) PLJR (182)** with reference to **Thomas Denial's** case cited *supra*. In view of these facts and circumstances, the learned Single Judge has committed error in ordering recovery in easy installments while re-assigning first and second A.C.P. to the appellant. If any amount is already recovered from the appellant during the pendency of the litigation, same shall be refunded to the concerned appellant within a period of two months from the date of receipt of this order.”

5. The learned Division Bench while allowing the Letters Patent Appeal in part, has categorically directed that If any amount is already recovered from the appellant during the pendency of the litigation, same shall be refunded to the



concerned appellant within a period of two months.

6. Learned counsel for the petitioner further drew the attention of this Court to one another decision of the learned Division Bench of this Court in **Srikant Dubey @ Shri Kant Dubey and Others v. The State of Bihar and Others [L.P.A. No. 458 of 2021]**, wherein similarly situated constables on being aggrieved by the order of the learned Single Judge, had preferred the afore-noted appeal, when the recoveries have been sought for from their salaries and pensionary benefits on account of wrong fixation of 1st and 2nd ACPs. The learned Division Bench while allowing the Letters Patent Appeal directed the concerned respondents to refund the recovered amounts, if any, to the respective appellants within a period of three months from the date of receipt of copy of this order and also to restore the pay-fixation in the light of the fact that the appellants are entitled to 1st ACP in the year 2002-2003. The learned Court further directed to proceed to re-fix their pay/pension and upon calculation of the difference of amount disburse within a period of four months.

7. The case of the petitioner is identical to those of the appellants of Letters Patent Appeals No. 431 of 2021 and 458 of 2021, is the contention of learned counsel for the petitioner.

8. At this juncture, learned counsel for the State



submitted that the case of the petitioner is required to be considered in the light of the decision of the learned Division Bench. If the respondent authorities shall find the case of the petitioner is at par with the appellants of the afore-noted L.P.As., similar relief shall be granted to him.

9. Having heard the submissions advanced on behalf of the respective parties and taking note of the mandate of the Hon’ble Apex Court as also the fact that the case of the petitioner is based on parity, this Court directs the respondent no.3 to restore the recovered amount in favour of the petitioner, preferably within a period of eight weeks from the date of receipt/production of a copy of this order and re-fix the pay/pension of the petitioner in the light of the decision rendered by the learned Division Bench of this Court in Letters Patent Appeal No. 458 of 2021.

10. The writ petition stands allowed to the extent indicated above.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03-09-2024
Transmission Date	

