

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11407 of 2024

=====

Pramod Kumar Sinha Son of Thakur Rabindra Singh, Resident of Ward No. 10, New Mainpura, Opposite Ashiyana Green City Apartment, Saguna, P.O. and P.S. - Danapur, District- Patna, Bihar - 801503.

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. Director General, Central Industrial Security Force, Block No. 13, CGO Complex, Lodhi Road, New Delhi - 110003.
3. Inspector General, CISF Eastern Sector HQrs, Tiril Ashram, Ranchi, Jharkhand - 835303.
4. The Deputy Inspector General, CISF Eastern Zone HQrs, GD Mishra Path, New Pataliputra Colony, Boring Road, Patna, Bihar - 800013.
5. The Group Commandant Central Industrial Security Force, Ministry of Home Affairs, Eastern Head Quarter, Boring Road, Patliputra, Patna, Bihar - 800013.
6. The Deputy Commandant, CISF Unit BRBCL, Nabinagar, P.O.- Pirauta, District- Aurangabad, Bihar- 824303.
7. Dry Inspector General (Adm.), Lodhi Road, New Delhi.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Gajendra Pratap Singh, Advocate
For the Respondent/s : Mr. (Dr.) Krishna Nandan Singh, ASGI
Mrs. Punam Kumari Singh, CGC
Mr. Amarjeet, JC to ASG

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT



Date : 20-12-2024

Heard Mr. Gajendra Pratap Singh, learned counsel appearing on behalf of the petitioner and Mr. (Dr.) Krishna Nandan Singh, learned ASGI along with Mrs. Punam Kumari Singh, learned CGC and Mr. Amarjeet, learned JC to ASGI for the respondents.

2. Petitioner has *inter alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:-

i. For issuance of a writ in the nature of Certiorari for quashing the order of reduction of pay and recovery contained in Letter No.8422 dated 30.11.2023 (Annexure 4, Pg-23) whereby his pay was reduced and an amount of Rs.2,13,908/- has been deducted from the his gratuity, arbitrarily and illegally without issuing any Notice/Show Cause and affording any opportunity of hearing, prior to such revision and deduction and in violation of the law laid down by the Hon'ble Supreme Court of India in State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors. reported in (2015) 4 SCC 334.

ii. Issue appropriate Writ(s) and Order(s) in the nature of Certiorari to quash the order/communication contained in Letter No.2798 dated 08.12.2023 (Annexure P-2), Letter No.RPAO/CISF/MHA/RAN/PENII/23-24/218, dated 12.10.2023 (Annexure P-3), Letter No.8422, dated 30.11.2023 (Annexure P-4), Letter No.629, dated 18.03.2024 (Annexure P-6) whereby and whereunder it has been communicated, ordered and reasoned to reduce the pay any effectuate a recovery of excess amount allegedly paid to the petitioner.



iii. Issue direction to the Respondents to restore the earlier pay fixation of the petitioner.

iv. For the direction upon the respondents to refund the amount of Rs.2,13,908/- with 12% interest from the date of deduction, illegally deducted from the Gratuity of the petitioner towards recovery of excess payment made due to alleged incorrect pay fixation on dated 04.11.2008.”

Brief facts:

3. The brief facts of the case are that on 29.05.2004 the petitioner was appointed in Central Industrial Security Force as ASI/EXE (RO) and on 04.11.2008, the petitioner got promoted to the rank of SI/EE (RO). The petitioner represented on 04.10.2010 before the respondent no. 7 to re-fix his pay as per the Central Civil Services (Revised pay) Rules, 2008 with effect from April, 2008, but the respondent no. 2 rejected the request of the petitioner to re-fix his pay scale. In reply to the petitioner's query made vide letter dated 07.12.2010 and 28.03.2011, the respondent no.7 and respondent no.2 informed that seniority of the petitioner in feeder rank is not affected. Aggrieved by the action of respondent no.2, insofar as delay in promotion of the petitioner w.e.f. the date one employee Dilip Singh, who is junior to the petitioner, the respondent no.7 vide order dated 26.07.2012 promoted the petitioner notionally w.e.f 02.05.2008 and re-fixed basic pay equal to SI/Exe Dilip Singh,



who was junior to the petitioner. The petitioner superannuated on 31.07.2023 and on 06.12.2023, petitioner made representation before the respondent no.6, requesting to release his pensionary benefits. Respondent no.6 vide letter no.2798 dated 08.12.2023 communicated the petitioner that Regional Pay and Account Office, CISF, Ranchi vide letter dated 12.10.2023 has raised objection in fixation of salary from 04.11.2008 in the pension paper of the petitioner. The petitioner vide letter dated 12.03.2024 made the representation before respondent no.6 and sought cogent reasons for the revision of pay and recovery of Rs.2,13,908/- from gratuity. Thereafter, the respondent no.6 vide its letter no.629 dated 18.03.2024, in response to the aforesaid representation, communicated that, vide letter no.8422 dated 30.11.2023, a decision was taken by respondents to reduce the pay of the petitioner and effectuate a recovery of Rs.2,13,908 from gratuity on account of incorrect pay fixation on 04.11.2008. Aggrieved by the same, the petitioner has filed the present writ petition.

Argument of respective parties:

4. Learned counsel appearing on behalf of the petitioner submitted that there is flagrant illegality, arbitrariness and blatant violation of Article 14 of the Constitution of India



inherent in the unilateral decision of the respondents to reduce the pay of the petitioner and effectuate a recovery of Rs.2,13,908/- as no show cause or any opportunity of hearing was given to the petitioner. Learned counsel further submitted that petitioner has not committed any misappropriation or misrepresented, rather the respondent has admitted that they have erroneously fixed pay scale of the petitioner after his retirement and the same cannot be recovered. In this regard, learned counsel has placed reliance upon the judgment of the Apex Court in case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.* reported in (2015) 4 SCC 334.

5. *Per contra*, Mr. (Dr.) K. N. Singh, learned ASG appearing on behalf of the respondents vehemently opposed the prayer of the petitioner on the ground that petitioner has given undertaking on 14.02.2023 that in case any outstanding government dues still remain, then the same may be recovered/adjusted from the payment of his salary, leave encashment, DCRG etc. Specific statement in this regard has been made in paragraph no.5 of the supplementary counter affidavit. Further, the respondents have also taken note of Rule 6(2), which prescribes for such undertaking in “Form of Option” and the same has been brought on record by way of



Annexure R-14 to the supplementary counter affidavit. Learned counsel has further relied upon a judgment of the Apex Court in case of **High Court of Punjab and Haryana Vs. Jagdev Singh**, reported in **2016(14) SCC 267** to contend that in paragraph no.11 of the said judgment, the principle enunciated in **Rafiq Masih (supra)** i.e., recovery from retired employee or employees, who are due to retire within one year of the order of recovery is said to be impermissible in law. Further, in view of the law laid down by the Apex Court in the case of **Jagdev Singh (Supra)**, learned ASG submitted that in the present case, the sub-officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale and, therefore, he is bound by the undertaking as per the provision of Rule 6(2). Learned ASG in background of the present case, stated that the law laid down in the case of **Rafiq Masih (Supra)** will not help the petitioner.

Analysis and conclusion

6. Heard the parties.

7. The main question which arises first for consideration of this Court, is, as to whether, the petitioner, who



was a Class-III employee and posted as Sub-Inspector of CISF, which is a non-gazetted post, and his case is required to be considered in light of the law laid down by the Apex Court in case of **Rafiq Masih (Supra)**, wherein, the Apex Court has laid down the principle of recoveries, and issued the guidelines in paragraph no.18, 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 herein above, we may, as a ready reference, summarise the following few situations. wherein recoveries by the employers, would be impermissible in law:

i. Recovery from employees belonging to Class III and Class IV service (or Group C or Group D service)

ii. Recovery from retired employees, or employee who are due to retire within one year, of the order of recovery.

iii. Recovery from employees, when the excess payment has been made for period more than 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. "



8. The Hon'ble Supreme Court in the case of **Rafiq Masih (Supra)** has summarized some of the situation wherein the recovery by the employer would be impermissible in law. While enumerating the situations, the Apex Court has also mentioned in paragraph no.18 of the judgment that it is not possible to postulate all situations of hardships which would govern the employee on the issue of recovery where the payments have mistakenly been made by the employer in absence of their entitlement. There may be various other situation which may create hardship to the employee on the issue of recovery.

9. The Supreme Court in the case of **Sahib Ram v. State of Haryana and Others** reported in **1999 Supp (1) SCC 18** has restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order by the authority concerned, without any misrepresentation on part of the employees by making following observations:

"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant



cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

10. In **Col. B.J. Akkara (Retd.) v. Government of India and Others** reported in **(2006) 11 SCC 709**, the Supreme Court held as under:

"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/ understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and V.Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]): (a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee. (b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

11. In **Syed Abdul Qadir and Others v. State of Bihar and Others** reported in **(2009) 3 SCC 475** excess payment was sought to be recovered which was made to the appellants—teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalized Secondary School (Service Conditions) Rules, 1983. The appellants



therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Supreme Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The Court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/ understanding of a Rule or Order. It was held thus:

"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."

12. The petitioner, who is a sub-inspector and is non-gazetted officer, a class III employee, I find that the undertaking which has been given and the law laid down by the Apex Court in case of **Jagdev Singh (Supra)** can be differentiated, considering the fact that the respondent (employees), who was Judicial Officer in the State of Haryana, Superior Judicial Service, which is a class II post and his pay scale was Rs.10000-325-15200 (Senior scale) and the Apex Court after considering the entirety of the matter and the facts of the said case, as well as, the law laid down in the case of **Rafiq Masih (Supra)** has turned down the relief which was granted by the High Court on the ground that the exception which has been laid down in the case of **Rafiq Masih (Supra)** will have no application to a situation such as the present wherein undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. In the said judgment, clarification has been made in paragraph nos.10, 11 and 12 to the extent that the principle enunciated in **Rafiq Masih (Supra)** cannot apply to a situation such as in the facts of the said case.



13. A perusal of the order of the Hon'ble Apex Court in the case of **Jagdev Singh (Supra)** would show that the Hon'ble Supreme Court had made the observations in respect of a Civil Judge, who was not a Class-III and Class -IV employee. As the Apex Court had made its observations regarding the undertaking given by the employee in category (ii) of the citation referred to therein which pertained to "recovery from retired employees, or employees who are due to retire within one year, of the order of recovery" and not a situation mentioned against category (i) that related to "recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service'). I am of the view that the ratio laid down in case of **Rafiq Masih (Supra)** is not applicable in case of class II officer and as such the respondents' contention to defend its order cannot be accepted.

14. I find it proper to make differentiation between the judicial officers, who are posted as Superior Judicial Service and any undertaking which officer of such a rank is required to be honored by them. In the present case, petitioner who is a class III employee and differentiation as has been made by the Apex Court in case of **Jagdev Singh (Supra)** being in case of Class II employee, the ratio will not be



applicable in the present case, i.e., in case of non-gazetted employee, even if such undertaking was taken while the petitioner had filled for option as per the requirement of Rule 6(2). The petitioner is now retired and for the said reason, his pensionary benefit has been reduced after recovery of an amount of Rs.2,13,908/-, resulting from the effective date when such recovery has been made from the petitioner leading to fixation of his pension at a reduced rate after his retirement. It is made clear that the petitioner had retired on 31.07.2023 and order of recovery has been made on 30.11.2023. If such recovery is allowed to go then the same will put hardship to the petitioner to meet his day to day life expenses.

15. According to this Court, no recovery can be made from a Class-III employee, who has not misappropriated or misrepresented the government fund and incorrect fixation is on the part of the Department. Therefore, the order/communication contained in Letter No.8422 dated 30.11.2023 (Annexure P-4), Letter No.2798 dated 08.12.2023 (Annexure P-2), Letter No.RPAO/CISF/MHA/RAN/PENII/23-24/218, dated 12.10.2023 (Annexure P-3) and Letter No.629, dated 18.03.2024 (Annexure P-6) are hereby set aside and quashed.



16. The authorities under such circumstances are directed to rectify in view of the observation made hereinabove and fix the pension of the petitioner on the pay scale, which he was entitled on the date of his retirement and terminal benefits, as the petitioner is entitled for the same, which must be paid forthwith.

17. The writ petition is allowed.

18. There shall be no order as to costs.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.12.2024
Transmission Date	NA

