

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13308 of 2023

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Priya Ranjan Son of Ram Naresh Sharma Resident of Village-Nehalpur,
Police Station-Belaganj, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Home (Police), Govt. of Bihar, Patna.
3. The Director General Cum Inspector General of Police, Govt. of Bihar, Patna.
4. The Additional Director General of Police, Special Baranch, Bihar, Patna.
5. The Superintendent of Police, Special Branch, Bihar, Patna.
6. The Superintendent of Police, Gaya.
7. The Superintendent of Police, Jehanabad.
8. The Deputy Superintendent of Police, Special Branch, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar, Advocate
For the Respondent/s : Mr.Manish Kumar (GP-4)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 08-04-2024 The present writ petition has been filed for quashing the Order No. 682/2023 dated 26.06.2023 issued by the Superintendent of Police, Special Branch, Bihar, Patna, whereby and whereunder the salary/pay-scale of the petitioner has been reduced. The petitioner has also prayed for quashing of the order dated 31.07.2023, whereby and whereunder directions have been issued to recover a sum of Rs. 3,43,810/-, from the



petitioner, on account of the excess pay paid to the petitioner herein.

2. At the outset, the learned counsel for the respondent-State has submitted, by referring to the counter affidavit filed on behalf of the respondents no. 4, 5 and 8 that the petitioner was appointed on the post of Constable on 06.01.2000, whereafter he had joined the Gaya District Force and was then sent for basic training at Constable Training School, however, the petitioner had failed in the firing test. Nonetheless, on account of inadvertence the services of the petitioner was confirmed by the Jehanabad District Force on 06.01.2003 and then he was also granted the benefits of first MACP scheme with effect from 06.01.2010, upon completion of 10 years of service. Nonetheless, during the course of the posting of the petitioner at the Special Branch, Bihar, Patna, it was detected that the petitioner had failed in the basic training exam, hence he was relieved and sent to Nathnagar, Bhagalpur for special training on 17.12.2021 and ultimately he was declared



successful on 08.06.2022, and then a decision was taken by the Special Branch Screening Committee, presided over by the Deputy Inspector General of Police, Special Branch, Bihar, Patna that since the petitioner has passed the basic training exam on 08.06.2022, he shall be granted the benefits of first MACP scheme with effect from 08.06.2022 and not with effect from 06.01.2010. Accordingly, the pay-scale/salary of the petitioner has been reduced vide Special Branch Order No. 682 of 2023 and consequently, the effect of shifting of the date of the grant of the benefit of first MACP scheme from 06.01.2010 to 08.06.2022, has been worked out and it has been found that excess pay to the tune of Rs. 3,43,810/- has been paid to the petitioner, thus a decision has been taken to recover the same from the petitioner. Thus, it is submitted that there is no discrepancy as far as the impugned order dated 26.06.2023 is concerned.

3. At this juncture, the learned counsel for the petitioner has submitted that it is a well settled law that in case there is no misrepresentation on



the part of the employee and excess salary is paid on account of mistake of the Department, no recovery can be made from the employee, hence the recovery sought to be made by the respondents, being illegal, is fit to be quashed, however, the petitioner be granted liberty to agitate his grievances with regard to revision of his pay-scale/salary before the respondent authorities.

4. I have heard the learned counsel for the parties and gone through the materials on record. It is a well settled law that no recovery can be affected from an employee, if there has been neither any misrepresentation on his part nor any fraud has been committed by such an employee leading to payment of excess amount of salary. The law regarding recovery is no longer *res integra* and has been well settled in a catena of decisions, reported in **(2009) 3 SCC 475, Syed Abdul Qadir & Ors vs State Of Bihar & Ors (2009)3 SCC (Syed Qadir vs. State of Bihar); (1995) Suppl.1 SCC 80 (Sahib Ram vs. State of Haryana); (1994) 2 SCC 52 (Shyam Babu**



Verma vs. Union of India) ; (1997) 6 SCC 139 (B.Ganga Ram vs. Regional Joint Director) ; (2006) 11 SCC 492 (Purshottam Lal Das vs. State of Bihar); (2000) 10 SCC 99 (Bihar State Electricity Board vs. Bijay Bhadur); (2006) 11 SCC 7089 (B.J. Akkara vs. Government of India University) and (1995) suppl. 1 SCC 18 (Sahib Ram vs. State of Haryana) and the one reported in (2015) 4 SCC 334 (State of Punjab vs. Rafique Masih).

5. Having regard to the facts and circumstances of the case and in view of the law laid down by the Hon'ble Apex Court in a catena of decisions, as aforesaid, I deem it fit and proper to hold that as a consequence of shifting of the date of grant of the benefit of first MACP scheme to the petitioner from 06.01.2010 to 08.06.2022, no recovery of the excess amount paid to the petitioner can be made, inasmuch as the respondents have not alleged that excess salary was paid on account of misrepresentation on the part of the petitioner but have rather admitted that



it was on account of inadvertence on the part of the department that excess salary was paid to the petitioner due to grant of the benefits of 1st MACP w.e.f. 6.1.2010 instead of 8.6.2022. Consequently, it is directed that in case any recovery has been made from the salary of the petitioner, the same be refunded within a period of four weeks from today and to that extent the impugned order dated 31.07.2023, issued by the Superintendent of Police (Accounts) Special Branch, Bihar, Patna, whereby and whereunder recovery has been directed to be made from the petitioner, is quashed. As far as the issue of validity of revision of pay of the petitioner, as a consequence of shifting of the date of grant of the benefit of first MACP scheme is concerned, the petitioner is granted liberty to approach the respondents for redressal of his said grievance.

6. Accordingly, the writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

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