IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12931 of 2012

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MADHAV SHARAN S/O - Late Triveni Singh R/O - Village - Hashanpur , P.O. - Nimsar, P.S. - Alipur Tikari, District - Gaya At Present - Chandrama House, Road No. 6/D Near S.B.I. A.T.M, Gardanibagh, Patna

... ... Petitioner/s

Versus

1. THE STATE OF BIHAR through Principal Secretary Health Service, Government of Bihar, Patna
2. Civil Surgeon-Cum-Chief Medical Officer, Muzaffarpur
3. Additional Chief Medical Officer, Muzaffarpur
4. District Accounts Officer, Pay Fixation Section, Muzaffarpur
5. Accountant General A and E Bihar, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhay Shanker, Advocate Mr.Shashi Shekhar Kumar Prasad, Advocate
For the AG	:	Dr.Anand Kumar, Advocate Mr.Rajan Prakash, Advocate
For the Respondent/s	:	Mr.Mithilesh Kumar Singh, AC to SC 15

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 10-05-2024

Heard Mr. Abhay Shanker along with Mr. Shashi Shekhar Kumar Prasad, learned counsels appearing on behalf of the petitioner; Dr. Anand Kumar along with Mr. Rajan Prakash, learned counsels for the Accountant General (Bihar) and Mr. Mithilesh Kumar Singh, learned AC to SC 15 for the State.

2. The brief facts of the case are that the petitioner was appointed on computer in the pay scale of Rs.220-315 on 22.03.1973 and subsequently, on 01.04.1978, he was posted as Clerk in the office of Primary Health Centre, Goh in the same pay scale.Thereafter, the posts of Lower Division Clerk(LDC)

and Upper Division Clerk (UDC) were merged with effect from 01.05.1980, and the pay scale for the petitioner was fixed at Rs. 284-372. Then again, petitioner's pay scale was revised and fixed at Rs. 580-860 in view of IVth Pay Revision w.e.f 01.01.1981.

3. Petitioner was granted Junior Selection Grade w.e.f 01.04.19823 and was placed in the pay scale of Rs. 1400-2300. In view of the Vth Pay Revision, petitioner's pay scale was revised w.e.f 01.01.1986 and he was placed in the scale of 1200-1800. Five years later, vide Memo No. 432 dated 18.11.1997 issued under the signature of Regional Deputy Director, Health Services, Magadh Division, Gaya the petitioner was provisionally granted Senior Selection Grade in the pay scale of 1400-2600 w.e.f 01.04.1991, subject to confirmation by the Finance Department *(Annexure 1).* Therafter, the petitioner was placed in the pay scale of Rs.4000-6000, w.e.f 01.01.1996, in view of the recommendations of the VIth pay Revision Commission.

4. The Additional Chief Medical Officer, Muzaffarpur vide office order dated 28.12.2002, in pursuance to letter dated 05.09.2002 No. 768(1) of the Director in Chief, Health Services and the letter dated 18.09.2002 bearing No.

1864 of the Civil Surgeon cum Chief Medical Officer, Muzaffarpur directed the petitioner to discharge the duties and responsiblities of the Head Clerk being the senior most in office *(Annexure-2).*

5. The new Pay Band known as Pay Band II (PBII) being Rs.9300-34800 was introduced w.e.f 01.01.2006 after having merged the earlier five different pay scales and resultantly, the petitioner was now entitled to Pay Band II till his retirement on 31.07.2008 *(Annexure-3).* Upon next pay revision, the petitioner's pay was fixed in the pay scale of 5500-9000 w.e.f 01.01.2006 and the said fixation was done by the Additional Chief Medical Officer (ACMO), Muzaffarpur (Respondent 3) *(Annexure-4).*

6. Vide Memo No. 1424 dated 29.05.2006, issued by the Civil Surgeon cum Chief Medical Officer, Muzaffarpur, Class III and IV, employees working in the district continuously for 12 years and 24 years were allowed to be given the benefit of first and second time bound promotion, with a condition that this promotion would not make any difference in their category. The salary would be determined under the provisions of Rule 22 A-1 of the Fundamental Rules and the salary would be paid after getting it verified from the District Accounts Office. The

Civil Surgeon cum Chief Medical Officer, Muzaffarpur, reserved the right to modify or cancel the promotion if any error was found. This was also required to be entered in the service book of the concerned employees *(Annexure-6).* Thereafter, the Petitioner superannuated on 31.07.2008.

7. Vide Letter dated 31.03.2011 bearing Memo No. 2348 issued by the Senior Accounts Officer, Accountant General (A & E), Bihar Patna (respondent No. 5), and addressed to to the Additional Chief medical Officer(ACMO), Muzaffarpur, it was informed that the petitioner was issued salary of Rs.7850/- and pension etc. on second ACP on the scale of 5000-8000 and request was also made to the ACMO to mention it in the service book. Request was also made to return the matter after fixing the pay in the pay scale of 1st ACP 4500-7000 and 2nd ACP 5000-8000 w.e.f from 01.01.2006, and after getting it verified from the District Accounts Office , the service book was required to be re-issued. The exercise was undertaken in view of Finance Department's, Govt. Of Bihar, Patna, resolution dated 13.03.2009 bearing No. 1868, according to which the petitioner was found inadmissible for benefit of promotion in pay scale 5500-9000 ***(Annexure-5 Impugned Order).*** Vide Pay Fixation Table dated 19.05.2011, which was made effective

from 01.01.2006, the petitioner's (Principal Clerk) pension was fixed on the basis of revised pay sacle of 1st ACP 4500-7000 and 2nd ACP as 5000-8000 *(Annexure-7).*

8. The petitioner is aggrieved by the letter dated 31.03.2011 bearing Memo No. 2348 issued by the Senior Accounts Officer, Accountant General (A & E), Bihar Patna (respondent No. 5) which is alleged to be in compliance of the resolution dated 13.03.2009 bearing No. 1868 issued by the Finance Department, Govt. Of Bihar, Patna, whereby the Pay Scale of Rs. 5000-8000 and Rs. 5500-9000 granted to the petitioner as a result of first ACP and second ACP respectively on 09.08.1999 is sought to be lowered to the scale of 4500-7000 (first ACP) and 5000-8000 (second ACP), more than three years after petitioner's retirement on 31.07.2008.

9. Learned counsel for the petitioner submitted that the law is well settled in this regard in the case of **State of Punjab & Ors. Vrs. Rafiq Masih (White Washer) & Ors.** reported in **(2015) 4 SCC 334** that recovery in absence of any mis-representation or fraud or either for the fault of the respondents, who had fixed higher pay scale while taking into account the fact that the petitioner was officiating at higher pay scale and performing duty of the said post efficiently till the date

of his retirement and the recovery cannot be made from the salary or from the pensionary benefit of the petitioner.

10. *Per Contra,* learned counsel for the respondents submitted that that Resolution No. 1868 dated 13.03.2009 (Annexure A), was issued under the authority of Deputy Secretary of Govt. and addressed to Account Officer, Office of Accountant General, Bihar, Patna. It is stated in the letter that in view of Account Officer's Letter No. Pension 14-SO-1429 dated 00, it is informed that the approved pay scale for the post of Head Clerk of regional offices was 4500-7000 w.e.f 01.01.1996. However, where the post of Office Superintendent (Collectorate Office etc.) was present, the pay scale of Rs. 5000-8000 was applicable. Since the clerks working in the office of the District Education Officer and District Education Superintendent are not part of the clerk cadre of the Collectorate, nor is there a post of 'Office Superintendent' of the clerk cadre in the said offices, hence the salary of pay 5000-8000 is not payable to the Head Clerk of the said offices. Accordingly, the clerks of the sid offices will get 1st ACP as 4500-7000 and 2nd ACP as 5000-8000 and Finance Department's Letter No. 2334 dated 09.05.2005 is not applicable on clerks of the said offices.

11. Learned counsel further submitted that the

petitioner retired from the post of clerk and as such, he has not been promoted to the post of Head Clerk on regular basis, therefore he is not entitled to get the scale of Rs. 4500-7000 and 5000-8000 on account of 1st ACP and 2nd ACP respectively.

12. Heard the parties.

13. The question as to whether recovery can be effectuated in absence of any misrepresentation or fraud being committed on the authorites, for any excess payment made due to wrong pay fixation, for apparently no fault of the payee, is no more res integra. While dealing with a situation where the petitioner received higher pay scale due to no fault of theirs, the Hon'ble Apex Court in the case of ***Shyam Babu Verma and Ors. v. Union Of India and Ors.*** reported in ***(1994)2 SCC 521*** held that it would not be just and proper to recover the salary already paid to them. In paragraph 11 of the report, the Apex Court has held as follows;-

> ***"11. Although we have held that the petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560 but as they have received the scale of Rs. 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way***

responsible for the same ."

14. In the case of ***State of Karnataka v. Mangalore University Non-Teaching Employees' Assn.,*** reported in ***(2002) 3 SCC 302***, the Apex Court has held that the employees concerned drew the allowance on the basis of a financial sanction accorded by the competent authority, i.e., the Government, the employees should not be penalised for no fault of theirs and it would be totally unjust to recover the amount of house rent allowance for the period 1.4.1994 when the order was passed for payment, till the payment were continued to be made.

15. The Hon'ble Supreme Court in the case of ***Syed Abdul Qadir v. State of Bihar,*** reported in ***(2009) 3 SCC 475*** had held that the recovery of the excess amount made to the employee due to mistake or wrong interpretation of rules cannot be made. Relevant paras of the aforesaid judgment are reproduced for the facility of reference:

> ***"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if 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 .***
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> ***58. The relief against recovery is granted by courts not because of any right in the employees , but in***

equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess .

59. Undoubtedly, the excess amount that has been paid to the appellant - teachers was no t 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 bonafide 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 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 , we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made ."

16. It is to be noted here that the petitioner retired from service on reaching the age of superannuation on 31.07.2008, and, during the period of his service, respondents have never questioned his upgradation, as being against rules. Moreover, there is no enquiry conducted in the matter during his service tenure. The respondents have filed cryptic reply without explaining as to how the upgradation of the petitioner is

contrary to the rules and, if so, against which rules. In absence of any specific stand by the respondents with regard to upgradation of petitioner, the impugned letter dated 31.03.2011 (Annexure-5) cannot sustain in the eyes of law.

17. It is settled position of law that the monetary benefits granted on account of upgraded pay scale cannot be taken away in an arbitrary and whimsical manner without providing an opportunity of being heard to the effected person.

18. It is no doubt true that the letter dated 31.03.2011 bearing Memo No. 2348 issued by the Senior Accounts Officer, Accountant General (A & E), Bihar Patna (respondent No. 5), entails adverse monetary consequences and the principles of natural justice ought to have been followed.

19. Considering the relief(s) as sought for by the petitioner that he seeks to file a detail representation before the competent authority in the light of law laid down by the Apex Court, as well as, taking into consideration the fact that the petitioner had officiated at the higher post, which remained sanctioned and vacant.

20. The authority concerned must dispose of the representation of the petitioner well within a period of three months from the date of filing of the representation.

21. With the above direction/objection, the present writ petition stands disposed of.

(Purnendu Singh, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.05.2024
Transmission Date	NA