IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2538 of 2024

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Sumant Kumar Ghosh Son of Sri Rash Mohan Ghosh Residence of Damaria Basti, beside Sitla Mandir, Gardani Bagh, Anishabad, Patna, Pin Code-800002.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. Director General of Police (D.G.P), Government of Bihar, Patna.
4. The Principal Accountant General (A. and E.) Govt. of Bihar, Patna.
5. The Inspector General, Patna, Bihar.
6. The Dy. Inspector General, Patna, Bihar.
7. Superintendent of Police, District- Supaul.
8. Superintendent of Police, District- Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar, Adv.
For the State	:	Mr. Kapileshwar Prasad Yadav, GP-11
For Accountant General	:	Mr. Arun Kumar Arun, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR

ORAL ORDER

4 27-11-2025 Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Accountant General.

<u>I.A. No. 01 of 2025 and I.A. No. 02 of 2025</u>

2. I.A. No. 01 of 2025 and I.A. No. 02 of 2025 have

been filed challenging the order dated 06.04.2022, sent to the office of Accountant General by the Senior Superintendent of Police, Patna and the petitioner could know about such letter only through counter affidavit and, therefore, during pendency of the writ petition the petitioner has filed the Interlocutory Applications challenging the said order.

3. For the reasons stated in I.A. No. 01 of 2025 and I.A. No. 02 of 2025 the same are allowed and order dated 06.04.2022, as contained in Memo No. 342, passed by the Senior Superintendent of Police is also being considered along with the main relief, which is detailed in paragraph-1 of the writ petition.

4. The instant writ petition has been filed for the following reliefs:-

> *"A. For issuance of appropriate writ/writs, order / orders, direction directions in the nature of certiorari for commanding respondents for quashing the MEMO NO: -PEN/19-663, Dated 05/07/2022 issued under signature of Senior Accountant Officer, Bihar, Patna. From Office of the Pr. Accountant General (A. & E.), Bihar, Patna, whereby and where under it has been directed to deduct Rs.9,73,028/- (Nine Lac Seventy-Three Thousand Twenty-Eight rupees) from the pension of petitioner.*
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> *B. For issuance of appropriate*

writ/writs, order / orders, direction/directions in the nature of mandamus for commanding respondents to stop the deduction of excess payment in light of MEMO NO.: PEN/19-663, Dated 05/07/2022 issued under signature of Senior Accountant Officer, Bihar, Patna from Office of The Pr. Accountant General (A. & E.), Bihar, Patna.

C. For issuance of appropriate writ/writs, order / orders, direction/directions in the nature of mandamus for commanding respondents to make the payment of deducted money to the petitioner made in light of MEMO NO.: - PEN/19-663, Dated 05/07/2022 issued under signature of Senior Accountant Officer, Bihar, Patna. From Office of The Pr. Accountant General (A. & E.), Bihar, Patna alongwith peal interest.

D. For issuance of any other writ/writs, order / orders, direction /directions for commanding the respondents for which the petitioner is legally entitled for."

5. I.A. No. 01 of 2025 has been filed for the following reliefs:-

"1. That, this Interlocutory application is being filed on behalf of the petitioner abovenamed for staying the order

dated 05.07.2022 contained in Annexure-9 to the writ application by which the Sr. Account officer Bihar Patna has directed to recover the amount of Rs.9,73,028/-from monthly pension to the petitioner without giving any notice and without hearing of the petitioner."

6. I.A. No. 02 of 2025 has been filed for the following reliefs:-

"1. That this Interlocutory application is being filed on behalf of the petitioner above named for modification / adding a prayer as prayed in Paragraph 1 of the main writ application bearing C.W.J.C. No. 2538 of 2024, as during the pendency of the writ application certain developments have been taken place which has not incorporated in the main writ application.

2. That the petitioner has filed writ application for quashing letter dated 05.07.2022 (Annexure-P-9) by which Senior Account Officer of Accountant General (A & E) Bihar directed to deduct Rs.09,73,028/- from the pension of the petitioner and direction to the respondent to stop the deduction of excess payment and to make payment of deducted money alongwith penal interest."

7. Learned counsel for the petitioner submits that the petitioner was initially appointed as Temporary Constable, in the Special Branch w.e.f. 31.12.1983, in the Pay-scale of Rs. 425-10-565-E.B.10-605 and upon finding his services to be satisfactory, the petitioner service was confirmed w.e.f. 31.12.1986 for the post of Constable.

8. It has next been submitted that in the light of resolution vide Sankalp No. 3/PAR 0-01-3/89 6021/F) 19.12.1989, issued by the Finance Department, Government of Bihar, petitioner's Pay-scale was revised w.e.f. 01.01.1986, in the Pay-scale of Rs. 950-20-1150-25-1 and thereafter the increment of payments were made as Rs. 970/- with effect from 01.01.1987, Rs. 990/- w.e.f. 01.01.1988, Rs. 1010/- w.e.f. 01.01.1989 and Rs. 1030/- w.e.f. 01.01.1990.

9. It has next been submitted that petitioner got first time bond promotion and accordingly on entitlement having been determined under the A.C.P., necessary orders were passed and pay fixation under A.C.P. was also directed.

10. It has next been argued that after retirement on 31.10.2021, vide order dated 06.04.2022, the Senior Superintendent of Police came out with a letter quantifying the amount to the tune of Rs. 9,73,028/- from the pension of the

petitioner and accordingly by fixing installment regular deduction is being made from the pension of the petitioner.

11. Learned counsel for the petitioner next submits that before quantifying the amount, no personal hearing or any procedure known to law was ever adopted and straightway unilaterally the Senior Superintendent of Police quantified the said amount and even without providing the calculation chart the said impugned order dated 06.04.2022 is said to have been passed, based on which the office of the Accountant General has started deducting the amount, as per the installment fixed by the Senior Superintendent of Police, which consequently being deducted by the Treasury Officer, Patna.

12. Learned counsel for the petitioner has placed reliance on the Judgment rendered by the Hon’ble Apex Court in the case of ***Chandi Prasad Uniyal And Ors. Vrs. State of Uttarakhand And Ors.***, reported in ***2012 AIR SCW 4742*** and as also another similar Judgment on the same subject being ***State of Punjab and Ors. Vrs. Rafiq Masih (White Washer),*** in Civil Appeal No. 11527 of 2014 (arising out of S.L.P. (C) No. 11684 of 2012), which is said to have been decided by the Hon’ble Court on 18.12.2014 and it has been held that in cases where the monetary benefits have been given to the employees in excess to

their entitlement due to unintentional mistakes committed by the concerned competent authorities, in determining the emoluments payable to them, and the employees were not guilty of furnishing any incorrect information/ misrepresentation/ fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees. The employees were as innocent as their employers in the wrongful determination of their inflated emoluments.

13. On the other hand, by referring to Annexure- R/3 of the counter affidavit, filed on behalf of the respondent no. 7, learned counsel for the state submits that there was imputation made in the order granting benefits of A.C.P. and in case of the amount, which is found excess to his entitlement, the same shall be recovered.

14. It has next been submitted that the petitioner is actually not entitled to the said pay-scale and, therefore, the quantification so made cannot be said to be bad in law.

15. Having heard the learned counsel for the parties, this Court is of the view that from the impugned order dated 06.04.2022 and as also the Memo No.- Pen/19-663, dated 05.07.2022, by which it has been directed to deduct an amount of Rs. 9,73,028/- from the pension of the petitioner, owing to

pension passed in violation of principles of natural justice and also in the teeth of Judgment of dictum by Hon'ble Apex Court, wherein the amount paid in excess have not been directed to be refunded or recovered from low pay employees and, therefore, taking quay from the said Judgments, this Court is of the view that the entire exercise, which has been carried out for quantification is unilateral and has been a serious violation of constitutional right of this petitioner, the order impugned by which the said recovery is directed is set aside and all the amounts which have been recovered from the pension of this petitioner is directed to be refunded to this petitioner.

16. However, the State respondents will be at liberty in so far fixation of correct pension is concerned, under appropriate pay-scale, for which the representation is already pending before the authorities and same has been brought on record vide Annexure-8, which is filed on 17.09.2021, shall be adjudicated by the authorities by giving proper hearing and on finding justification, for not making any change in fixation of pension, necessary reasoned order shall be passed and in case of any change being required, the same may be fixed with appropriate reasoned order making in amenable to judicial review, in case of any challenge being made to such fixation by

the petitioner on feeling aggrieved with the same.

17. Accordingly, the instant writ petition stands disposed of.

(Ajit Kumar, J)

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