IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19195 of 2024

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Smt Anuradha @ Anuradha, Wife of Late Dr. Prabodh Kumar, Resident of Maruti Niwas, New Colony Kalibari, P.S.- Civil Line District-Gaya.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Education, Bihar, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The District Magistrate, Gaya.
4. The District Education Officer, Gaya.
5. The District Programme Officer, (Establishment) Gaya.
6. The Treasury Officer, Gaya.
7. The Accountant General Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shivendra Prasad, Adv.
For the Respondent/s	:	Mr. Sanjay Kumar, AC to GP-23
For the AG, Bihar	:	Mr. Bindhyachal Rai, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

2 13-02-2025 Heard the parties.

2. The husband of the petitioner was appointed as an Assistant Teacher on 19.09.1994 and, later on, was granted promotion to the post of Head Master on 02.03.2017. While the petitioner was working on the afore-noted post, he died in harness on 13.06.2021. The petitioner, widow of the Late Dr. Prabodh Kumar has submitted application for fixation of her family pension along with death-cum-retiral benefits. However, family pension of the petitioner was fixed @ Rs. 33,000/- after deducting increments at the pay-scale of Rs. 66,000/-, though

the pension of the petitioner ought to be fixed at the last pay drawn @ Rs. 70,000/-. On account of the deduction of the increments, a fresh calculation has been made and vide P.P.O. dated 20.10.2022 issued under the signature of Senior Accounts Officer, an amount of Rs. 5,17,555/- has been recovered from the total gratuity amount of Rs. 20,00,000/- sanctioned to the late husband of the petitioner.

3. The petitioner being aggrieved with the action of the respondents and the order issued by the Senior Accounts Officer, has approached this Court seeking quashing of the Order No.202112101801 PO dated 20.10.2022, whereby the alleged excess amount to the tune of Rs.5,17,555/-, caused to be recovered.

4. Learned counsel for the petitioner referring to the averments made in the writ petition has contended that the identical issue as has been raised in the instant writ petition was under consideration before this Court in **Krishnakant Narayan Singh v. The State of Bihar and Others [C.W.J.C. No. 10898 of 2022 and another analogous case]**, wherein this Court after having taken note of the mandate of the Apex Court has held that recovery would be impermissible in law and further observed that the alleged excess amount was paid to the writ-

petitioners of the said case on account of wrong fixation of pay-scale, which took place in the year 2010 itself. The said fixation was approved by the District Accounts Officer, Gaya, whereupon the writ-petitioners had been accorded stipulated pay-scale. Further, it is not the case of the respondents that the excess payment made to the writ-petitioners was on account of any misrepresentation or fraud on their part. Admittedly, the excess payment was made due to mistake in interpreting the Governments' Resolution/Circular and its applicability. This Court placing reliance upon the decisions rendered in the cases of **Thomas Daniel v. State of Kerala and Others [Civil Appeal No. 7115 of 2010]**, **State of Punjab & Others v. Rafiq Masih (White Washer) [(2015) 4 SCC 334]** and further the decision of this Court in **Umesh Prasad Singh & Another v. The State of Bihar & Others [C.W.J.C. No. 10900 of 2022]** adhering to the mandate of the Apex Court observed that the action of the respondents in effecting recovery or any attempt to recover the alleged excess increments after retirement is unjustified.

5. In the case in hand, it is the admitted position that the husband of the petitioner died in harness on 13.06.2021 and, as such, any recovery from the deceased-employee is also

impermissible in law; moreover, the deceased was never informed during his life time and no opportunity was given to him to ascertain the correctness of report of recovery; now it is difficult for a widow to dispute such recovery on merit for want of proper opportunity. In this regard, reference may be taken to a decision of this Court in the case of **Smt. Indu Devi v. State of Bihar and Others [2004 (1) PLJR 162]**.

6. A counter affidavit has been filed on behalf of the respondent no.4. It is fairly contended by the answering respondent that the order passed by this Court in **Krishnakant Narayan Singh** (supra) is in the process to be complied with. All the more, in the light of the decision of this Court, the answering respondent has already sent a demand for allotment to the Director, Primary Education, Patna, by preparing a list of such employees along with demand letter for payment of the recovered amount and the process of payment is underway. The name of the husband of the petitioner also finds place at SI. No. 23 of the list.

7. Considering the submissions advanced on behalf of the parties and taking note of the fact that the case of the petitioner is squarely identical to those of **Krishnakant Narayan Singh** and **Umesh Prasad Singh** (supra); which came

to be disposed off on 21.12.2023 (Annexure-P/3) as also the contention of the answering respondent that the payment of the recovered amount is underway, the impugned Order No.202112101801 PO dated 20.10.2022 issued by the Senior Accounts Officer is hereby quashed to the extent it relates to the recovery of alleged excess amount of Rs.5,17,555/- from the retiral benefits.

8. The present writ petition stands allowed in terms of the judgment rendered in **Krishnakant Narayan Singh** (supra).

9. The respondent authorities are directed to restore the deducted amount of gratuity to the petitioner, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

(Harish Kumar, J)

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