**(1999) 07 PAT CK 0034**

**In the Patna High Court**

**Case No :** C.W.J.C. No. 10173 of 1998

Smt. Sushma Prasad APPELLANT

Vs

The State of Bihar and Others RESPONDENT

**Date of Decision :** 29-07-1999

**Acts Referred:**

**Citation :** (2000) 2 PLJR 96

**Hon'ble Judges :** Radha Mohan Prasad, J

**Bench :** Single Bench

**Advocate :** V.N. Sahay and Arun Srivastava, for the Appellant; Mithilesh Mowar, for State, A.N. Singh and P.K. Rajgrihar for Accountant General, for the Respondent

## Judgement

Radha Mohan Prasad, J.—In the present writ application the Petitioner is aggrieved by the order directing for recovery of alleged salary drawn by her on account of wrong grant of increment because she never passed the Hindi Noting and Drafting Examination which was a pre-condition for grant of increment in the case of Headmistress.

2. Admittedly, at the relevant time the Petitioner was working as Headmistress. There seems to be some dispute about her passing the Hindi Noting and Drafting Examination. According to the Petitioner, she passed the Examination in question and an endorsement was made in her service book on the basis of letter No. 28 dated 31.7.1978 of the District Education Officer, Patna. No such letter has, however, been produced by the Petitioner.

3. According to the counter affidavit filed on behalf of the Accountant General, the Department i.e. the District Superintendent of Education, vide letter dated 12.11.1998 resubmitted the pension papers stating, inter alia, that the pension and gratuity may be finalised treating the incumbent that she had not passed the said Hindi Noting and Drafting Examination and on that basis her pension was finalised on the pay admissible to her. Further, It Is stated that the excess payment in pay and allowances due to erroneous grant of increments were

adjusted from the gratuity/pension.

4. In view of the law settled that no such deduction can be made where payments have been made due to mistake on the part of the authority and not because of misrepresentation by the employee, learned Additional Standing Counsel appearing for the Accountant General, in the facts and circumstances, did not fairly press to support the order for recovery passed against the Petitioner. He, however, submitted that according to the settled principle, only the Courts, including the Apex Court have held that it was not open for the authority to recover the same because of the employee concerned had not received the said amount on any misrepresentation and not that the pensionary benefits cannot be fixed on the basis of the pay admissible to the employee concerned. He, however, submitted that the matter has again been referred to the District Superintendent of Education, Patna for verification and in case on verification it is found that the Petitioner had passed the Hindi Noting and Drafting Examination or that she was granted exemption from passing the said examination, the Accountant General shall take necessary steps for release of her full pension on the basis of the last pay drawn by her.

5. This Court finds that the stand taken on behalf of the Accountant General is quite fair and justified. In view of the law settled by this Court in the case of Dinanath Rai v. State of Bihar, reported in 1999 (2) PLJR 447, no such recovery can be made from the Petitioner as nothing has been brought on record to show that it was on account of any misrepresentation by the Petitioner that she was granted increment on account of alleged non-passing of the Hindi Noting and Drafting examination.

6. However, as regards her passing of Hindi Noting and Drafting Examination, the Accountant General has taken very fair stand in referring the matter to the District Superintendent of Education and the Petitioner may satisfy the District Superintendent of Education about her claim, whereupon the District Superintendent of Education shall issue necessary sanction order accordingly.

7. It is needless to say that the Accountant General shall issue necessary authority slip soon after the receipt of the sanction order from the ''District Superintendent of Education, Patna.

8. The writ petition is, accordingly, stands disposed of.

 