

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20219 of 2021

Arvind Kumar Son of Siyasharan Prasad, Resident of Siyaram Palace Sita Ram Path, Tej Pratap Nagar, P.O.- Anisabad, Police Station- Beour, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
2. The Engineer-in-Chief, Water Resources Department, Govt. of Bihar, Patna.
3. The Under Secretary (Management) Water Resources Department, Govt. of Bihar, Patna.
4. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
5. The Chief Engineer, Irrigation Creation, Water Resources Department, Saharsa.
6. The Superintendent Engineer, Irrigation, Circle Saharsa.
7. The Executive Engineer, Irrigation Division, Birpur, Supaul.
8. The Accountant General Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar, Advocate Mr. Lalit Narayan Jha, Advocate
For the Respondent/s	:	Mr. Sudhanshu Bhushan, AC to GP-7

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 13-11-2024

Heard Mr. Rajesh Kumar, learned Advocate for the petitioner and Mr. Sudhanshu Bhushan, learned AC to GP-7.

2. The petitioner, who superannuated on 31.01.2021 from the post of Assistant Engineer, Irrigation Division, Birpur, Supaul has invoked the jurisdiction of this Court seeking a direction upon the respondents to ensure payment of all his retiral benefits, including, gratuity, unutilized earned leave and



arrears of pension with interest on the basis of last pay slip issued by the Finance (Personal Claim Fixation Cell) Department (hereinafter referred to as “the PCFC”) dated 18.01.2021. The petitioner also sought a direction not to recover the differential amount of pay, which has been earlier paid under the 2nd Modified Assured Career Progression (hereinafter referred to as “MACP”) Scheme with effect from 01.01.2009 with Grade Pay PB-3+6600 vide departmental order no. 4426 dated 08.09.2014.

3. During the pendency of the writ petition, the State respondent authorities have come out with a decision to recover an amount of Rs. 7,41,799/-, which is said to have been excess to the entitlement of the petitioner and, as such, the petitioner by filing an interlocutory application bearing I.A. No. 01 of 2024, has prayed for quashing of the Letter No. 915 dated 18.08.2021 and further Letter No. 411 dated 16.03.2022, by which decision has been taken to recover the aforementioned excess amount from the unutilized earned leave of the petitioner and pay the remaining amount after adjusting the grade pay difference amount to the petitioner. The petitioner also sought quashing of the Letter No. 610 dated 17.05.2022, by which the grade pay difference amount of Rs. 7,41,799/- was recovered from Rs.



11,69,920/- and after the deduction, an amount of Rs. 4,28,121/- was paid to the petitioner.

4. The petitioner was initially appointed as Junior Engineer and upon being found eligible, he was promoted to the post of Assistant Engineer and posted in the office of Irrigation Division, Birpur, Supaul. Finally he superannuated from his service on 31.01.2021. In course of service, the petitioner was accorded the benefit of 2nd MACP with effect from 01.01.2009 with grade pay PB-3+6600 vide Memo No. 4426 dated 08.09.2014 by the Water Resources Department, Government of Bihar, Patna along with many other similarly situated persons in the pay scale of Rs. 15,600-39,100 with grade pay 6600/-.

5. While the petitioner was getting the benefit of 2nd MACP with effect from 01.01.2009, as aforementioned, he was promoted to the post of Assistant Engineer vide Letter No. 874 dated 15.09.2016. In the meantime, the Water Resources Department, all of a sudden, by making certain amendment, revised the grade pay to PB-3+5400 vide Memo No. 4447 dated 06.12.2017 and accordingly, the pay scale stood fixed as 6500-10500 (8000-19500). The petitioner along with others on being aggrieved by the aforementioned order/notification of the



department, moved before this Court in CWJC No. 411 of 2018.

6. The Hon'ble Court upon hearing the parties vide its order dated 12.01.2018, stayed the recovery till the next date of hearing. In the meantime, the petitioner superannuated on 31.01.2021 and thus, the Executive Engineer, Irrigation Division, Birpur, Supaul sent all the pension papers along with original service book, pay slip, slip of salary assessment etc. to the Superintending Engineer, Irrigation Division, Birpur, Supaul and accordingly, no dues certificate was issued and finally, the admissible amount has been paid, except the leave encashment, gratuity and the 10 per cent of pension, since some departmental proceeding is pending against the petitioner, in terms of Rule 43 (C) and (D) of the Bihar Pension Rules, 1950.

7. On being aggrieved by the action of the respondent authorities, the petitioner approached before this Court. Now the grievance of the petitioner, in the present writ petition, is confined to the recovery of the alleged excess amount from the earned leave.

8. A counter affidavit has been filed on behalf of the respondent nos. 1, 2, 3, 5, 6 and 7. It is categorically averred that the petitioner was granted the benefit of 2nd MACP with effect from 01.01.2009 in the Pay Band - III (Rs. 15,600 –



39,100 + Grade Pay Rs. 6600/-) vide departmental order contained in Memo No. 4426 dated 08.09.2014. In the aforesaid letter, it was specifically mentioned in Clause 2 that in case, any defect is found in future, the order shall be cancelled or modified and the excess differential amount paid to the concerned employees shall be recovered. Admittedly, the petitioner was promoted to the post of Assistant Engineer (Civil) vide departmental notification contained in Memo No. 874 dated 15.09.2016. However, in the meanwhile, the Finance Department came out with a resolution, as contained in Letter No. 3655 dated 10.04.2015, as also in view of the opinion of the Finance Department, the Water Resources Department amended the departmental order dated 08.09.2014 and allowed the Pay Band-III + Grade Pay Rs. 5400/- instead of Pay Band-III + Grade Pay Rs. 6600/- vide Memo No. 4447 dated 06.12.2017.

9. Pursuant thereto, the Finance (PCFC) Department issued fresh pay slip of the petitioner on 21.10.2020, referring the salary of the petitioner in Pay Band-III + Grade Pay Rs. 5400/- with effect from 01.01.2009. In the said premise, the excess amount paid to the petitioner was calculated, which came to Rs. 7,41,799/-, the same was also duly informed to the petitioner vide Letter No. 915 dated 18.08.2021.



10. In view of the aforesaid facts, the Finance (PCFC) Department has been requested vide Letter No. 411 dated 16.03.2022 to issue authority slip in favour of the petitioner, after adjusting the amount of excess payment (Rs. 7,41,799).

11. Learned Advocate for the petitioner while questioning the action of the respondent authorities in issuing the impugned orders, effecting recovery from the leave encashment after his superannuation, vehemently contended that the same is wholly without jurisdiction, bad, illegal and against the mandate of the Hon'ble Supreme Court in the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.*, reported in *(2015) 4 SCC 334*.

12. Taking this Court through the decision of the Hon'ble Supreme Court passed in *Rafiq Masih* (supra), it is urged that the authority cannot recover the amount from the retired employee, when the excess payment has been made for five years or more before the order of recovery. Moreover, in the case in hand, the petitioner was made alleged excess payment for more than 12 years. It is also forcefully contended that admittedly, it is not a case where the excess payment has been made on account of any fraud or misrepresentation on the part of the petitioner. There is no personal undertaking given by the



petitioner to any of the concerned authority. Hence, the reliance of the State authorities on Clause 2 of the departmental Memo No. 4426 dated 08.09.2024 is of no relevance.

13. Further reliance has also been placed on a decision of the learned co-ordinate Bench of this Court in the case of ***Bikrama Singh & Anr. Vs. The State of Bihar & Ors.*** (CWJC No. 3455 of 2012) wherein, the learned Court placing reliance over the judgment of the Hon'ble Apex Court in the case of ***Rafiq Masih*** (supra) has been pleased to quash the impugned order of recovery from the retiral benefits.

14. Per contra, learned Advocate for the State submitted that the petitioner was a Class – II employee and there is no bar in recovery of excess payment from his post retiral benefits. The petitioner is further obliged to refund the excess amount, in view of the judgment passed by the Hon'ble Supreme Court in the case of ***High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh*** reported in (2016) 14 SCC 267, wherein, the Hon'ble Court has held that the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded.

15. It would be worth noticing that being aggrieved by



the action of the respondent authorities, some of the similarly situated persons by filing different writ petitions, including CWJC No. 20160 of 2021, had approached before this Court, wherein the learned Court vide order dated 05.01.2022 was pleased to set-aside the order as contained in Memo No. 4447 dated 06.12.2017 and extended the similar benefits, as has been allowed in CWJC No. 8146 of 2020 and other connected matters decided on 22.11.2021.

16. Suffice it to say that in CWJC No. 8146 of 2020, this Court upon acceding the contention of the writ petitioners that they have not been provided notice or opportunity of hearing before re-fixation of pay and recovery, treated the impugned communication as a show-cause notice to the respective petitioners. Petitioners of the said writ petitions were directed to file their reply/explanation to the impugned show-cause notice and further directed the competent authority to pass a speaking order, considering the contentions raised by the petitioners in their explanation. In the light of the decision of this Court, as aforementioned, the petitioner before this Court also filed a representation; however, the respondent authorities came out with the impugned orders of recovery.

17. This Court has given anxious consideration to the



submission advanced on behalf of the learned Advocate for the respective parties and also perused the materials available on record. The facts of the case in hand are not in dispute. Admittedly, the petitioner was accorded the benefits of 2nd MACP with effect from 01.01.2009 with Grade Pay PB-3 + 6600 vide Memo No. 4426 dated 08.09.2014, which was later on modified by revising it to grade pay of PB-3+5400 vide Memo No. 4447 dated 06.12.2017. Pursuant thereto, an alleged excess amount to the tune of Rs. 4,98,372/- pertains to a period from 01.01.2009 to 22.12.2016, while the petitioner was holding the post of Junior Engineer and further Rs. 2,43,427/- pertaining to period from 23.12.2016 to 31.10.2020, while the petitioner was holding the post of Assistant Engineer were directed to be recovered.

18. The issue with regard to the recovery from retiral benefits of Class III and IV employees stood crystallized by the Hon'ble Apex Court in various decisions. It would be relevant to observe that in view of differences of view expressed in *Shyam Babu Verma & Ors. Vs. Union of India & Ors.*, reported in (1994) 2 SCC 521; *Sahib Ram Vs. State of Haryana & Ors.*, reported in 1995 Supp (1) SCC 18; *Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand and Ors.*,



reported in **(2012) 8 SCC 417**, the learned Division Bench of the Hon'ble Supreme Court referred the matter before a larger bench of three Judges. On reference, the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra), taking into account several cases on the issues formulated the conditions under which there could be no recovery from the excess payment from the employees, if it would be iniquitous or harsh or arbitrary. It would be apposite to quote the conditions as formulated by the Hon'ble Court, which are encapsulated in paragraph no. 18 thereof:-

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.



(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

19. It is not in dispute that the impugned order of recovery completely rests upon the letter of the Water Resources Department as contained in Memo No. 4447 dated 06.12.2017, whereby the department placing reliance upon the resolution of the Finance Department and the opinion rendered by it made certain amendments and revised the pay scale of the petitioner and other similarly situated persons, resulting into recovery of alleged excess payment paid to them, which letter was questioned by identical set of persons in CWJC No. 20160 of 2021. The learned Single Judge upon finding the writ petition



similar to that of the order passed in CWJC No. 8146 of 2020, allowed the writ petition and set aside the impugned order(s) contained in Memo No. 4447 dated 06.12.2017, along with other orders, directing for recovery of alleged excess payment.

20. The learned Court made it clear that if the respondents have recovered any amount from the petitioners of the said writ petition, the same shall be refunded to them, in accordance with law. In the light of the aforementioned order passed by this Court, the petitioner filed a detailed representation. However, the respondent State authorities without even realizing the fact that the impugned order contained in Memo No. 4447 dated 06.12.2017 is no more in existence, issued letter(s) directing for recovery of alleged excess payment to the tune of Rs. 7,41,799/-, from the leave encashment of the petitioner.

21. The supplementary counter affidavit filed on behalf of the respondent nos. 2, 3, 5, 6 and 7 admitted the aforesaid facts; with an additional averment that against the order dated 05.01.2022 passed in CWJC No. 20160 of 2021, the State respondents preferred letters patent appeal bearing LPA No. 172 of 2022, along with an interlocutory application bearing I.A. No. 02 of 2022 for stay of the operation of the order of the learned Single Judge. The answering respondents have



categorically averred that effective steps are being taken to redress the grievance of the petitioner and the prayer of the petitioner shall be considered after disposal of LPA No. 172 of 2022.

22. This Court is at lost that once the very basis of order of recovery of alleged excess payment is no more in existence, on account of setting aside of the primary order, in question, in CWJC No. 20160 of 2021, any order for recovery, as has been passed in the case of the petitioner, is not only in the teeth of the order passed by this Court in identical matter rather would be termed as an attempt to over reach the said order; and thus contemptuous. In view, thereof, this Court has no hesitation to hold the impugned order of recovery, as contained in Letter No. 915 dated 18.08.2021, as also the Letter No. 411 dated 16.03.2022 and Letter No. 610 dated 17.05.2022 are unsustainable in law as well as on facts; hence stand quashed.

23. Consequent upon the quashing of the impugned orders of recovery, the respondent authorities are directed to ensure the payment of deducted amount of leave encashment forthwith.

24. It is also pertinent to observe that so far the entitlement of the petitioner to the benefit of 2nd MACP with



effect from 01.01.2009 with Grade Pay PB-3+6600 is concerned, the same shall be governed by the final outcome of the LPA No. 172 of 2022.

25. Suffice it to observe that this Court has not made any observation with regard to the entitlement of the petitioner with regard to the benefit of 2nd MACP as well as the pending departmental proceeding, on account of which the respondent State authorities have withheld 10 per cent of pension and full gratuity.

26. The writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.11.2024
Transmission Date	NA

