

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.14716 of 2011**

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Madhusudan Prasad Singh son of Late Bhaju Ram Singh resident of Village-  
Barahia, Police Station- Barahia, District - Lakhisarai, At Present Posted As  
Electrician Grade-II, Tubewell Division, Munger

.... .... Petitioner/s

Versus

1. The State Of Bihar Through The Secretary Minor Irrigation, Water Resources  
Department, Govt. Of Bihar, Patna
2. The Chief Engineer (South) Tubewell Wing, Minor Irrigation, Water Resources  
Department, Sheikhpura, Patna
3. The Project Coordinator, Minor Irrigation Water Resources Department,  
Tubewell Wing, Govt. Of Bihar, Patna
4. The Superintending Engineer, Tubewell Circle, Mithapur, Patna
5. The Executive Engineer Tubewell Division, Minor Irrigation, Water Resources  
Department, Govt. Of Bihar, Patna

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Rajesh Kumar

For the Respondent/s : AC to GP7

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

**ORAL JUDGMENT**

**Date: 29-03-2016**

Heard Sri Rajesh Kumar, learned counsel for the petitioner  
and learned AC to GP No. 7.

The petitioner, invoking writ jurisdiction of this court  
under Article 226 of the Constitution of India, has prayed for  
quashing of an order contained in Memo No. 580 dated 17.5.2008  
(Annexure - '1' to the writ petition) issued under the signature of  
Executive Engineer, Tube well Division, Minor Irrigation, Water  
Resources Department, Government of Bihar, Patna whereby pay  
scale of the petitioner from Rs. 4000- 6000/- was directed to be



reduced to Rs. 3050 – 4590/- . The petitioner has further prayed for quashing the order contained in letter no. 571 dated 21.4.2011 whereby in view of calculation made in Memo No. 580 dated 17.5.2008 it was held that from January 1979 to April 2008 petitioner was paid excess to the tune of Rs. 300424/- and direction was issued to realize the said amount in installments of Rs. 10000/- per month which was to be deducted from the salary of the petitioner. A claim has been made by the petitioner that he was initially appointed vide Annexure – ‘3’ to the writ petition i.e. an order contained in letter no. 184 dated 25.1.1979 . He was appointed in the year 1979 in work charge establishment as Electrician Grade – II in the pay scale of Rs. 240- 396/-. From time to time he was granted other benefits.

Learned counsel for the petitioner has drawn my attention to Annexure – ‘4’ to the writ petition i.e. a Government Resolution regarding revision of pay scale of Government employees. He has specifically drawn my attention to running page no. 30 of the writ petition to show that Electrician Grade – II was having pay scale of Rs. 240- 396/- and revised scale for such post was made as Rs. 535- 765/-. The petitioner from time to time was granted other benefits and finally he was drawing the pay scale of Rs. 4000 - 6000/-. However unilaterally vide Annexure – ‘1’ to the writ petition a decision was taken to reduce pay scale of the petitioner and also direction was



issued for recovery of the huge amount i.e. more than 3 lakhs from the salary of the petitioner in equal installment of Rs. 10000/- per month. The petitioner thereafter filed representation before the authority concerned. However, the authority concerned has not paid any heed to the representation of the petitioner. Thereafter he was constrained to approach this court by filing the present writ petition.

In this writ petition by order dated 20.10.2011 while directing the State Counsel to file counter affidavit a bench of this court had directed for stay of further recovery till further order of this court.

In this case a counter affidavit has been filed on behalf of the respondent no. 2 to 5 and it has been indicated that till date of filing of counter affidavit total amount of Rs. 70000/- was already deducted in view of Annexure – '2' to the writ petition. Learned State Counsel by way of referring to the averment made in the counter affidavit submits that initially the petitioner was granted wrong pay scale. He submits that instead of granting pay scale of Rs. 220 – 315/- he was incorrectly granted pay scale of Rs. 240 – 396/- which immediately after being noticed has been corrected. However it has not been indicated as to whether before taking such action the petitioner was given any opportunity to explain or not.

Keeping in view the fact that Annexure – '1' and '2' was



issued without following the principle of natural justice certainly those orders may not sustain in the eye of law. Moreover, fact remains that petitioner is occupying Class III post and it is not the case of the respondents that by making any misrepresentation or committing fraud the petitioner had drawn excess pay whereas in view of appointment letter of the petitioner, which was issued by the competent authority the petitioner at the initial date of appointment was provided with the pay scale of Rs. 240 – 396/-. In view of the fact that it was not a case of misrepresentation and the fact that petitioner is a Class III employee, in view of a recent judgment of the Hon'ble Apex Court reported in **(2015) 4 Supreme Court Cases 334 [STATE OF PUNJAB AND OTHERS Versus RAFIQ MASIH (WHITE WASHER) AND OTHERS]** no recovery can be effected and as such the order of recovery i.e. Annexure – '2' is hereby set aside with further direction to refund the recovered amount i.e. Rs. 70000/- which has been accepted in the counter affidavit to the petitioner, within a period of eight weeks from the date of receipt / production of a copy of this order. If the deducted amount is not paid to the petitioner within a period of eight weeks from today, the petitioner shall be entitled to get the said amount with simple interest at the rate of 9% per annum. In that event the State may recover the interest amount from the pocket of the concerned officer / employee

responsible for non- compliance of the order of this court. So far question of re-determination of pay scale is concerned, the respondent authorities are granted liberty to examine after affording full opportunity to the petitioner and pass appropriate order in accordance with law. Orders contained in Annexure – ‘1’ and ‘2’ are set aside.

With above observation and direction, the writ petition is allowed.

**(Rakesh Kumar, J)**

Praful/-

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