IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13975 of 2013

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Mithilesh Kumar Singh, aged about 57 years, son of late Pashupati Singh, resident of village-Pachkhanda, police station-Mashrakh, District-Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Minor Irrigation, Water Resources Department, Govt. of Bihar, Patna.
3. The Chief Engineer, North Tubewell Wing, Minor Irrigation, Water Resources Department, Muzaffarpur.
4. The Project Coordinator, Minor Irrigation, Water Resources Department, Tubewell Wing, Government of Bihar, Patna
5. The Executive Engineer, Tubewell Division, Chapra.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Rama Kant Sharma, Senior Advocate,
: Mr. Rakesh Kumar Sharma, advocate
: Mr. Laxmikant Sharma, advocate
For the Respondent/s: Mr.Siddharth Shankar Pandey, A.C. to G.P.-24.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 01-07-2016

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. In this case, the petitioner is praying for quashing the letter No.313 dated 07.03.2013, whereby and whereunder the petitioner after revision of pay scale has been put in the pay scale of Rs.3050-75-3950-80-4590 with effect from 01.01.1996 in terms of the Finance Department's Resolution No.660 (F2) dated 08.02.1999 whereas he was wrongly given the higher pay scale, directed to recover the excess amount received by the petitioner in 30 installments.

3. The petitioner was appointed as Daily wages employee on 15.03.1980, later on regularized in service vide Memo No.495 dated 24.07.1992 along with the other daily wagers.

4. The petitioner was working in the Bihar Water Development Corporation and later on the said Corporation was taken over by the Water Resources Minor Irrigation Department, Patna vide Resolution No.2846 dated 08.05.1996 and accordingly, the services of 417 employees of the Corporation were absorbed in the Water Resources Minor Irrigation Department, Patna. At the time of absorption, the petitioner was getting the pay scale of Rs.1200-1800/- admissible to the Electrical Grade-II post.

5. After the enforcement of the 5th Pay Revision Commission, the Fitment committee was constituted by the Government of Bihar. As per the claim of the petitioner in terms of the report of the Fitment committee, the Finance Department issued Resolution No.3M-2-5-VE-PU-01/99-660/(F/2) dated 08.02.1999 (Annexure-3 to this writ application) and in terms of the Fitment Committee report the petitioner was given substituted pay scale of Rs.5500-9000/-.

6. As per the claim of the petitioner there was no discrepancy in fixation of his pay scale in terms of the Finance Department's Resolution as the corresponding pay scale of Rs.1200-18000/- is Rs.5500-9000/-, but illegally and arbitrarily the pay scale of the petitioner was fixed at Rs.3050-4590/-.

7. It appears that the respondents have issued a show cause vide letter no.4892 dated 9.10.2007, there it has been shown that he has wrongly been given the higher pay scale whereas he is entitled to the lower pay scale and vide office order No.313 dated 07.03.2013 re-fixed the pay scale of the petitioner and directed for recovery of the excess amount in 30 installments. During the pendency of this writ application, the petitioner retired.

8. In the counter affidavit the State has taken a stand that the petitioner was adjusted against the post of Electrician under the Bihar Water Development Corporation after the liquidation of the Corporation. The pay scale recommended by Fitment Committee was never made applicable to the employees of Minor Resources Department and as such substituted pay scale suggested by the Fitment committee was never made applicable to Electrician under the Minor Resources Department, rather the Finance Department suggested the pay scale of Electrician of the Minor Water Resources Department in the following manner:-

Period	**Pay scale**
01.01.1971	220-315
01.04.1981	425- 605
01.01.1986	950- 1400
01.01.1996	3050 - 4590

9. The learned counsel for the State submitted that the claim of the petitioner that his pay scale has been fixed on the basis of the recommendation of the Fitment Committee report is incorrect, rather the pay scale was fixed on the recommendation of the Finance Department and in terms of the said recommendation the petitioner will fall in the pay scale of Rs.3050-4590/- with effect from 01.01.1996 and as such the respondents have not acted *de horse* to any Circular or statutory provision against the petitioner and so much so that before issuing the order for correcting the pay scale and recovery of excess amount, the petitioner was given show cause and after giving proper opportunity of hearing, considering the explanation, the respondents have passed the order of recovery.

10. Learned counsel for the petitioner has basically submitted that as the fixation of pay has been made much earlier and in the fixation of pay scale, the petitioner had not played any role, neither misrepresented nor committed any fraud in the fixation of pay scale, so in view of the judgment of the Apex Court in the case of ***State of Punjab and Others vs. Rafiq Masih (white Washer) and Others,*** reported ***2015(4) SCC page 334***, the recovery of excess amount is completely restrained, especially with respect to class III and Class IV employees.

11. Learned counsel for the State has fairly conceded that aforesaid judgment covers the present case.

12. It will be relevant to quote paragraph No.18 of the said judgment, which reads as under:-

> *"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 at 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:*
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> *(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."

13. Paragraph No.18 of the aforesaid judgment itself suggests that the basic consideration of the judgment is with respect to class-III and class-IV employees and excess amount paid prior to five years, cannot be the subject matter of recovery from the salary or retiral dues of the employees.

14. Considering the facts of the present case as also the principle laid down by the Apex Court in the case of *Rafiq Masih(supra),* the order No.313 dated 07.03.2013 is quashed to the extent of recovery of the excess amount, with regard to fixation of pay scale of the petitioner, this Court is not inclined to interfere with the same. The respondents will have liberty to fix the retirement benefit of the petitioner in terms of the pay scale fixed by them. If any amount has been recovered, the respondents will be obliged to return the same with simple interest at the rate of 6% per annum.

15. With the aforesaid observations and directions this writ petition is disposed of.

(Shivaji Pandey, J)

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