IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 7900 of 2008

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Govind Jha, son of Sri Jagat Narain Jha, Permanent resident of village and Post Office: Khojpur, Police Station: Babu barhi, District: Madhubani.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Water Resources, Govt. of Bihar, Patna.
2. Under Secretary, Department of Water Resources, Govt. of Bihar, Patna.
3. Chief Engineer (Mechanical) Department of Water Resources, Bihar, Patna.
4. Superintending Engineer (Mechanical), Irrigation Mechanical Circle, Muzaffarpur.
5. Executive Engineer (Mechanical) Irrigation, Mechanical Division, Birpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Satyendra Narayan Singh

For the Respondent/s : Mr. Raghwanand (GA-11)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 08-03-2017

Heard Sri Satyendra Narayan Singh, learned counsel for the petitioner and Sri Raghwanand, learned Govt. Advocate – 11.

2. The petitioner, who was Electrician Grade-III, while in service had approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India with following reliefs:-

(i) Quashing the office order contained in letter no. 3241 dated 5.9.07 passed by the Chief Engineer Mechanical, Department of Water Resources, Bihar (Respondent no. 3).

(ii) Quashing the office order of Executive Engineer (Mech.) (Respondent no.5) contained in Memo no. 2754 dated 6.11.07 (Annexure -8) and the Letter no. 3068 dated 31.12.07 (Annexure – 8/A).

(iii) For direction commanding the respondents not to implement the legal and arbitrary impugned orders and direct not to recover the paid salary for the duties against the I.T.I. trained post.

(iv) For issuance of order/direction to the respondents to pay the entire amount as per admissible pay scale of the I.T.I. trained post which has been withheld illegally.

3. It is case of the petitioner that he was initially appointed on 21-08-1967 as Helper under the Irrigation Department, Govt. of Bihar. While in service, with due permission, he passed the I.T.I. examination in the year 1976 itself and after being eligible to get higher pay-scale, the case of petitioner alongwith others was considered by the Executive Engineer, vide letter no. 1069 dated 28-09-1999 (Annexure – 3) and it was proposed to grant pay-scale of Rs. 4000-6000. Finally, the Executive Engineer by another letter i.e. letter no. 1071 dated 29-09-1999 (Annexure – 4) enhanced the pay scale and fixed it to Rs. 4000-6000 with certain conditions.

4. Learned counsel for the petitioner submits that subsequently, enhanced pay-scale of petitioner and others were finally approved by the Finance Department and he was getting the same pay-scale regularly in the capacity of Electrician Grade-III. However, suddenly, without any rhyme and reason, the Chief Engineer (Mechanical) by its order contained in letter no. 3241 dated

05-09-2007 (Annexure – 7 to the writ petition) directed the Superintending Engineer to take appropriate step since the petitioner was incorrectly given enhanced pay-scale of Rs. 4000-6000 and directed to reduce the same and give the pay-scale of Rs. 3050-4590. Besides making correction, it was also directed to take step for recovery of the excess paid amount and finally, by order contained in letter no. 3068 dated 31-12-2007 (Annexure 8/A, running page 28), the Executive Engineer took a decision to recover total amount of **Rs. 1,55,173/-** (one lac fifty five thousand one hundred & seventy three) treating the same as excess paid amount. It was directed that the said amount shall be recovered in 16 equal installments of Rs. 4,000/- and thereafter, remaining amount i.e. **Rs. 91,173/-** (ninety one thousand one hundred & seventy three) was directed to be adjusted from the retiral benefit of the petitioner.

5. In this case, by way of filing supplementary affidavit, it has been indicated that during pendency of the writ petition, the petitioner superannuated w.e.f. 31-03-2009. Till the date of his retirement, the amount of Rs. 64,000/- i.e. Rs. 4,000/- per month of 16 installments was recovered from the salary of the petitioner and after his retirement, the remaining amount i.e. 91,173/- was recovered from the claim of 'leave encashment' amount of the petitioner.

6. In the writ petition, a specific plea has been taken that

the pay-scale, which was enhanced to the petitioner, was not done by any misrepresentation or fraud committed by the petitioner. He submits that while examining the record, initially the Executive Engineer had considered to enhance the pay-scale of the petitioner alongwith others and finally, the said enhancement was already approved by the Finance Department.

7. According to learned counsel for the petitioner, once the enhanced pay-scale of the petitioner was finally approved by the Finance Department, the Chief Engineer was having no authority to pass any order either to reduce the pay-scale or to pass any order for recovery. However, at the time of hearing of this petition, learned counsel for the petitioner had confined his prayer only to the extent of directing the respondents to refund the recovered amount to the petitioner. It has been argued that time without number, it has been held that if any benefit is given to an employee, without his any misrepresentation, at subsequent stage even after detection of such irregularity, it can be corrected, but any excess paid amount may not be recovered. Learned counsel for the petitioner has placed heavy reliance on a Judgment of the Hon'ble Apex Court reported in **2015 (1) PLJR (SC) 261 {State of Punjab and others Vs. Rafique Masih (White Washer)}.** He has specifically referred to paragraph-12 of the said Judgment, which is

quoted herein below:-

> **"12. 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:-**
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> **(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).**
>
> **(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.**
>
> **(iii) Recovery from 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 out weigh the equitable balance of the employer's right to recover."**

On aforesaid ground, a limited prayer has been made to direct the respondent(s) to refund the entire recovered amount i.e. **Rs. 1,55,173/-**, which was illegally recovered from the petitioner.

8. Sri Raghwanand, learned Govt. Advocate – 11 has vehemently opposed the prayer. He submits that since incorrectly by Annexure – 3 to the writ petition, the pay-scale of the petitioner was enhanced, after the said irregularity was detected by the authority concerned, it was rightly corrected and since incorrectly the said enhanced pay-scale was given to the petitioner, the excess paid amount was already recovered from the petitioner and the recovered amount is not required to be refunded. However, he does not dispute the law laid down by the Apex Court in **Rafique Masih's case** (*supra*). Further, with regard to submission of learned counsel for the petitioner that earlier enhanced pay-scale was finally approved by the Finance Department, the learned State counsel has not disputed the same. Meaning thereby that earlier pay-scale was already approved by the Finance Department.

9. Besides hearing learned counsel for the parties, I have also perused the materials available on record. On going through the record, it is evident that after the petitioner had passed I.T.I. examination, the case of petitioner with others was considered for granting enhanced pay-scale and accordingly, it was enhanced as Rs.

4000-6000. The said order was passed in the year 1999 itself and from 1999, the petitioner enjoyed the benefit of enhanced pay-scale and continued to get the same up to the year 2007. However, without any notice to the petitioner, the Chief Engineer had issued direction by the impugned order i.e. order contained in **Annexure – 7** to the writ petition for reducing the pay-scale as well as recovery of the amount. Since, learned counsel for the petitioner has confined his prayer only to the extent of refund of recovered amount, this Court has not delved into the matter as to whether re-fixation was correct or incorrect, but fact remains that it was a case of enhancement without any misrepresentation or misconduct/fraud committed by the petitioner and as such, in view of law laid down by the Apex Court, as has been quoted hereinabove, there is no reason but to allow the writ petition.

10. Accordingly, the writ petition is allowed with a direction to the respondents to refund the recovered amount within a period of three months from the date of receipt/production of a copy of this order. It is made clear that if the aforesaid amount is not refunded and credited to the account of the petitioner, the petitioner shall be entitled to claim interest at a simple rate of 6% from the date on which deduction was started from the pay-scale of the petitioner and in that event, the State Government would be at liberty to recover

the said interest amount from the officer/employee responsible for non-compliance of the order of this Court within time.

11. The writ petition is allowed.

(Rakesh Kumar, J.)

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