

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9403 of 2008

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Pashupati Nath Pathak Son of Late Baikunth Narayan Pathak, Resident of
Village - Birampur, Via Kayam Nagar, P.S.- Koilwar, District - Bhojpur

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Minor Irrigation, Government of Bihar, New Secretariat, Patna
2. The Secretary, Department Of Finance, Government of Bihar, Old Secretariat, Patna
3. Engineer-in-Chief, Tube Well Wing, Minor Irrigation, Bishwesaraiya Bhawan, Bailey Road, Patna
4. The Chief Engineer, Tube Well Wing, Minor Irrigation, Government of Bihar, Sheikhpura, Patna
5. Joint Secretary, Minor Irrigation, Government of Bihar, New Secretariat, Patna
6. Under Secretary, Minor Irrigation, Government Of Bihar, New Secretariat, Patna
7. Superintending Engineer, Tube Well Circle, Minor Irrigation, Government of Bihar, Ara, Bhojpur
8. Executive Engineer, Tube Well Circle, Minor Irrigation, Government of Bihar, Buxar, Bhojpur
9. District Accounts Officer, Collectorate, Ara, Bhojpur
10. The Accountant General (A&E), Bihar, Bir Chand Patel Marg, Patna

With

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Miscellaneous Jurisdiction Case No. 331 of 2010

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Pashupati Nath Pathak Son of Late Baikunth Narayan Pathak, Resident of
Village - Birampur, P.S.- Koilwar, District - Bhojpur

.... Petitioner

Versus

1. The State Of Bihar
2. Sri Sudhir Kumar, the Secretary, Minor Irrigation, Govt. Of Bihar, New Secretariat, Patna
3. Sri Mihir Kumar Singh, Secretary, Department Of Finance, Govt. Of Bihar, Old Secretariat, Patna
4. Sri Jaimangal Paswan, the Engineer-In-Chief, Tube Wing, Minor Irrigation, Bishwesaraiya Bhawan, Bailey Road, Patna
5. Sri S.K. Thakur, the Chief Engineer Tube Well Wing, Minor Irrigation, Govt. Of Bihar, Sheikhpura, Patna
6. Sri Dharmadeo Prasad, the Joint Secretary, Minor Irrigation, Govt. Of Bihar, New Secretariat, Patna
7. Sri Kishori Paswan, the Under Secretary, Minor Irrigation, Govt. Of Bihar, New Secretariat, Patna
8. Sri Amrendra Chandra Sahay Verma, the Superintending Engineer, Tube Well Circle, Minor Irrigation, Govt. Of Bihar, Ara, Bhojpur



9. Sri Shyam Chand Purve, the Executive Engineer, Tube Well Circle, Minor Irrigation, Govt. Of Bihar, Buxar, Bhojpur

10. Sri Arun Kumar Singh, the Accountant General (A&E), Bihar Vir Chand Patel Marg, Patna

.... Opposite Parties

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Appearance :

(In CWJC No.9403 of 2008)

For the Petitioner : Mr. Ranjan Kr. Dubey
Mr. Viveka Nand Pathak, Advocates

For the Respondents : Mr. S. Raza Ahamad, AAG 5
Mr. Vishwambhar Prasad, AC to AAG 5

(In MJC No.331 of 2010)

For the Petitioner : Mr. Ranjan Kr. Dubey
Mr. Viveka Nand Pathak, Advocates

For the Opp. Parties : Mr. S. Raza Ahamad, AAG 5
Mr. Vishwambhar Prasad, AC to AAG 5

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 25-08-2017

I.A. No. 5034 of 2008 in CWJC No. 9403 of 2008

The interlocutory application has been filed with the prayer for amendment of the relevant portion of the prayer in the writ petition by adding the following prayer –

“For quashing of the order dated 22.09.2006 by which the respondents had directed the petitioner to deposit a sum of Rs. 6,30,742/- which has been paid to him on account of alleged excess payment of salary and further directed that otherwise the case shall be instituted for recovery of the same.”

2. Having regard to the nature of the prayer, the interlocutory application is allowed and the petitioner is permitted to make appropriate amendment in the writ petition in course of the day.



CWJC No. 9403 of 2008

3. The present writ petition has been filed for quashing of the order dated 22.09.2006 by which the respondents held that a sum of Rs. 6,30,742/- is recoverable from the petitioner on account of payment of excess salary paid to him; for quashing of order dated 20.10.2005 contained in Memo No. 4403 by which the Joint Secretary cancelled the promotion given to the petitioner during his service career and has directed for recovery as the amount paid on account of salary; and for payment of the pension and other benefits on the basis of his last pay drawn and to not disturb the petitioner's post retirement benefit.

4. Learned counsel for the petitioner at the outset submits that the petitioner's promotion has been cancelled after he retired from service without grant of any opportunity of hearing prior to passing of such order. It is submitted that the order for recovery from the post of retirement of the petitioner based on such order of cancellation of promotion cannot also be sustained.

5. Learned counsel for the respondents opposes the writ petition on the basis of the counter affidavit but however, is unable to controvert the stand of the petitioner with regard to non-grant of opportunity of hearing prior to passing of the impugned order cancelling the petitioner's promotion.

6. In the above view of the matter, the impugned order



dated 22.09.2006 (Annexure-1), the order dated 20.10.2005 (Annexure-2) as well as the order dated 03.11.2005 (Annexure-10) are hereby set aside and the matter is remitted to the Secretary, Department of Finance, Government of Bihar, Old Secretariat, Patna (respondent no. 2) to decide the matter afresh after grant of opportunity of hearing to the petitioner in accordance with law expeditiously and preferably within a period of three months from the date of receipt/production of a copy of this judgment. The writ petition accordingly stands allowed.

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7. In view of the aforesaid judgment, MJC application also stands disposed of.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.08.2017
Transmission Date	N.A.

