

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.13982 of 2008

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Naresh Prasad Singh, son of Late Ramdeo Singh, resident of village- Maldah,  
Police Station-Barbigaha, District- Sheikhpura

.... .... Petitioner

Versus

1. The State of Bihar
2. The Commissioner-cum- Secretary, Minor Irrigation, Government of Bihar,  
Patna
3. The Chief Engineer, Bihar Water Development Corporation, Patna
4. The Executive Engineer, Tubewell Division, Bihar Water Development  
Corporation, Gaya
5. The Executive Engineer, Tubewell Division, Munger

.... .... Respondents

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#### Appearance :

For the Petitioner/s : Mr. Ravindra Nath Dubey, Adv.  
Mr. Sanjay Kumar Singh, Adv.  
Mr. Rajnish Kumar, Adv.

For the Respondent/s : Mr. AC to AAG-4

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

ORAL JUDGMENT

**Date: 20-04-2017**

Heard Sri Ravindra Nath Dubey, learned counsel for  
the petitioner and learned AC to Addl. Advocate General no.4.

2. The petitioner, who retired as Mohrir ( Lower  
Division Clerk) on 31.01.2008, has approached this Court, invoking  
its writ jurisdiction under Article-226 of the Constitution of India,  
with a prayer to quash an order, contained in Annexure-10 series to  
the writ petition , issued under the signature of the Executive  
Engineer, Tube Well Division, Munger, .By the said order, the  
Respondent no.5 has reduced the pay scale of the petitioner with  
effect from 01.01.1997 and direction was issued to recover the excess



amount. The petitioner has also prayed for directing the Respondents not to make any recovery from his retiral dues.

3. Learned counsel for the petitioner submits that even during pendency of the writ petition, in the counter affidavit, it has been indicated that total amount of Rs.4,15,099/- was found to be recoverable from the petitioner and Rs.60,000/- was recovered from the salary of the petitioner and remaining amount has been recovered from his retiral dues. He submits that after quashing the impugned order, Respondents may be directed to refund the amount with statutory interest.

4. Short fact as disclosed in the writ petition is that the petitioner was initially engaged as daily-wager Mohrir in the year 1972. Since he was having qualification of B.A., he was included in the work charge establishment with effect from 01.01.1979. While working in the same capacity in the year 1981 vide Memo No.502 dated 17.03.1981, the petitioner along with other similarly situated persons was taken into regular establishment and his service was regularized. During his service period, he was granted time bound promotion. He also passed departmental examination. However, after long period of his service, on 14.10.2006, a show cause notice was issued to the petitioner regarding difference of pay scale, which was properly replied by the petitioner. The petitioner made it clear that in



view of relaxation granted by the government regarding passing of departmental Accounts Examination, he was earlier granted time bound promotion. It has been pleaded that after submission of show cause, which was filed on 25.01.2007, the petitioner was informed regarding reduction of pay scale and liability of Rs.4,15,099/- was fixed, which was to be recovered and finally huge amount has been recovered from his retiral dues.

5. Sri Ravindra Nath Dubey, learned counsel for the petitioner submits that it is not a case that the petitioner by way of misrepresentation or committing fraud had got higher pay scale, but fact remains that since the petitioner was taken in regular establishment as Mohrir( Lower Division Clerk), his pay scale was rightly fixed, whereas in the counter affidavit an incorrect stand has been taken that the petitioner was in work charge establishment and not in regular establishment. He submits that long back in the year 1971 itself, the pay scale of Mohrir( Lower Division Clerk) was fixed and payment of the same was granted and subsequently, the petitioner was also given time bound promotion. At the verge of retirement, the Respondents were not having any authority to pass an order for cancelling the pay scale, which was granted to the petitioner at the initial stage and also for directing for recovery. It has been settled long back that if in case of non-misrepresentation or



fraud, any higher pay scale is given, at the subsequent stage no recovery can be made. Finally, this issue has already been set at rest by the Hon'ble Apex Court in a case reported in **2015 ( 1) PLJR (SC) 261 ( State of Punjab and others Vs. Rafique Masih (White Washer)** and in paragraph-12 of the said Judgment a categorical guideline has been given.

6. Learned counsel for the petitioner submits that the petitioner was a Class-III employee and he never misrepresented for getting any higher pay scale. The pay scale, which was granted to the petitioner at the initial stage, was granted rightly and in an unauthorized manner, the Respondent/ Executive Engineer had passed the order impugned i.e. Annexure-10 series to the writ petition. According to learned counsel for the petitioner, besides allowing the writ petition, Respondents may be directed for refund of the recovered amount. The petitioner is also entitled to get interest on entire recovered amount.

7. Learned AC to Government Advocate-10 has opposed the prayer of the petitioner. By way of referring to the facts disclosed in the counter affidavit, he reiterates that the petitioner was earlier in the Work Charge Establishment and incorrectly the petitioner was given the pay scale of Mohrir( Lower Division Clerk. However, he was not in a position to dispute the fact that the Apex



Court in Rafique Masih's case has already settled that in case of excess payment to Class-III and Class-IV employee, no recovery can be affected.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. In the writ petition, there is specific stand that the petitioner was in the Work Charge Establishment and, thereafter, he was taken in regular establishment and his services were regularized as Mohrir( Lower Division Clerk) . It is also not in dispute that the pay scale of Mohrir was given to the petitioner at the initial stage. After laps of several decades there was no reason for the Executive Engineer to unsettle the pay scale, which was settled long back in the year 1997. At this juncture, the Court proposes to incorporate paragraph-12 of the Rafique Masih's case, which is follows:

“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:-

- (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.”

9. On perusal of the aforesaid direction of the Apex Court as well as law on the point, which was settled long back that without suppression of fact or misrepresentation no recovery can be affected, the Court is of the opinion that the order impugned as contained in Annexure-10 series to the writ petition, is liable to be set aside. Accordingly, the writ petition is allowed. Consequently, all the recovery, which has been affected in view of Annexure-10 series, are required to be refunded to the petitioner, which must be credited to



the account of the petitioner within a period of three months from the date of receipt/production of a copy of this order.

10. The writ petition stands allowed.

11. While allowing the writ petition, it is also observed that the Respondent/ State may take appropriate steps against the concerned officer, who had passed such order without perceiving that it was not a case of suppression of fact. It is further directed that if the recovered amount is not credited to the account of the petitioner within a period of three months, the petitioner shall be entitled to claim simple interest @ 8% per annum, which shall be calculated from the date on which recovery was affected from the salary / retiral dues of the petitioner. In such eventuality, the Respondent/State shall be entitled to recover the interest amount from the concerned employee/officer responsible for non-implementation of the order within the aforesaid period.

**(Rakesh Kumar, J)**

NKS/-

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