

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.619 of 2015

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1. Sunil Kumar Singh Son of Sri Shivji Singh Resident of vill+P.O-Sarmastpur, via-Gayaspur, P.S-Paru, Distt.-Muzaffarpur. At present posted as Sub Divisional Clerk, Public Health Sub Division, Raxual, Distt-East Champaran
  2. Chote Lal Singh S/O Late Ramparikshan Singh Resident of vill+P.O+P.S-Jiradai, Distt-Siwan. At present posted as Accounts Clerk, Public Health Division, Chapra, Distt-Saran, Bihar
- .... .... **Petitioners**

### Versus

1. The State of Bihar through its Secretary, Public Health Engineering Department, Patna, Bihar.
  2. The Engineer-in -Chief cum Special Secretary, Public Health Engineering Department, Patna, Bihar.
  3. The Chief Engineer, Public Health Engineering Department, Muzaffarpur Zone, Muzaffarpur, Bihar
  4. The Superintending Engineer, Public Health Engineering Circle, Motihari, East Champaran, Bihar.
  5. The Executive Engineer, Public Health Engineering Division, Motihari, East Champaran, Bihar
- .... .... **Respondents**
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### Appearance :

For the Petitioners : Mr. Harendra Kumar Tiwary, Advocate  
For the State : Mr. S.C.Mishra, SC 16 and  
Mr. Madhukar Mishra, AC to SC 16

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**

**ORAL JUDGMENT**

**Date: 28-03-2018**

Heard learned counsel for the petitioners as well as learned counsel for the State.

2. The petitioner is aggrieved by the notification dated 3.12.2014 (Annexure 3), issued by the Superintending Engineer, Public Health Engineering Circle, Motihari, East Champaran (respondent no.4) modifying the date from which benefits of the 1<sup>st</sup> Assured Career Progression (ACP) had earlier been granted to them under order dated 30.4.2005 (Annexure 1). The date of 1<sup>st</sup> ACP has



been modified in respect of petitioner no.1 to 12.10.2007 in place of 9.8.1999, whereas in respect of petitioner no.2, the effective date of 1<sup>st</sup> ACP has been modified to 16.1.2010 instead of 1.12.1999.

3. It is the case of the petitioners that the modification/correction in the date of grant of 1<sup>st</sup> ACP to the petitioners has been done after lapse of more than nine years of grant of the 1<sup>st</sup> ACP, i.e., on 7.3.2005 on the ground of mistake on the part of the respondent authorities themselves. From perusal of Annexure 3 dated 3.12.2014, it appears that the aforesaid mistake came to the notice of the State authorities when the benefits of the Modified Assured Career Progression was to be given to the employees in view of the decision of the Screening Committee dated 7.3.2005. It has been stated in Annexure 3 that the date of 1<sup>st</sup> ACP is being modified with effect from the dates on which they have passed the departmental examinations, as earlier the petitioners had not passed the departmental examination and were by mistake granted the benefits of 1<sup>st</sup> ACP vide decision 7.3.2015.

4. Learned counsel for the State submits that the original grant of 1<sup>st</sup> ACP vide Office order dated 30.4.2005 (Annexure 1) contained the clause that the same was subject to rectification in case of any error.



5. Though the said modification has been undertaken after nine years, the reason for modification appears to be sustainable. In view of the stand taken by the State, learned counsel for the petitioner confines his prayer only to the effect that no recovery can be made from the petitioners by virtue of the modification vide Annexure 3 as the same has been issued erroneously after nine years. He further submits that recovery may not be permitted on basis of such delayed correction in respect of petitioners' entitlement of 1<sup>st</sup> ACP that also without affording them opportunity of hearing before the civil consequences are inflicted upon them, as the same is inequitable and violative of Principle of Natural Justice.

6. Reliance has been placed upon a judgment in case of **State of Punjab and others Vs. Rafiq Masih, white washer etc**, reported in **2015(1) PLJR 261 SC**. The Apex court while deciding the said case has taken note of the fact that though 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 and the same are said to be recovered at a belated stage. The Apex court, as a ready reference, has visualized 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 outweigh the equitable balance of the employer's right to recover.”*

7. In view of the law as noticed above, this Court finds that the petitioners' case is squarely covered under clause (i) and (iii) of the paragraph 12 of the judgment. This Court is of the view that recovery may not be effected from the petitioners to the extent of correction of their ACP as in the case of the petitioners also as they are class III employees and the correction has been made by the employer in exercise of their entitlement at a belated stage after about nine years of original grant of 1<sup>st</sup> ACP vide decision of the



Screening Committee dated 7.3.2005. This Court would therefore restrain the respondent authorities from effecting any recovery in respect of benefits availed by the petitioners prior to the correction of the date of grant of 1<sup>st</sup> ACP.

8. The writ petition is accordingly allowed to the extent indicated hereinabove.

**(Madhuresh Prasad, J)**

Shashi.

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