

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.30 of 2011

=====

Ram Bali Mishra S/O Bisheshwar Mishra Resident Of Village And P.O-
Chandauna, P.S- Jalley, District- Darbhanga, Presently Posted As
Electrician In Tube Well Sub- Division, Muraul, District- Mazaffarpur.

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary Minor Irrigation Department, Government Of Bihar,
Patna
3. The Finance Secretary, Finance Department, Government Of Bihar,
Patna.
4. The Co- Ordinator-Cum- Chief Engineer., Tube Well Project,
Muzaffarpur.
5. The Chief Engineer, North Tube Well Wing, Muzaffarpur.
6. The Executive Engineer, Tube Well Division, Muzaffarpur.

.... Respondents

With

Civil Writ Jurisdiction Case No. 681 of 2011

=====

Ram Kishore Sah S/O Parameshwar Sah R/O Village And P.O. Ram
Nagar, P.S. - Katra, District - Muzaffarpur Presently Posted As
Electrician In Tube Well Division Muzaffarpur

.... Petitioner

Versus

1. The State Of Bihar
2. The Secretary, Minor Irrigation Department, Government Of Bihar,
Patna
3. The Finance Secretary, Finance Department, Government Of Bihar,
Patna
4. The Co-Ordinator-Cum-Chief Engineer, Tube Well Project,
Muzaffarpur
5. The Chief Engineer, North Tube Well Wing, Muzaffarpur
6. The Executive Engineer, Tube Well Division, Muzaffarpur

.... Respondents

With

Civil Writ Jurisdiction Case No. 20365 of 2011

=====

Nawin Kumar S/O Late Mahavir Prasad Sharma R/O Mohalla- Atardah
Kachchi - Pakki Road, Near Mai Asthan, P.O.- Ramna, P.S.- Sadar,
District- Muzaffarpur, Retired Electrician, In The Office Of Executive
Engineer, Tube Well Division, Bela, Muzaffarpur



.... Petitioner

Versus

- 1. The State Of Bihar
- 2. The Secretary Minor Irrigation Department, Government Of Bihar, Patna
- 3. The Finance Secretary Finance Department, Government Of Bihar, Patna
- 4. The Co-Ordinator-Cum-Chief Engineer Tube Well Project, Muzaffarpur
- 5. The Chief Engineer North Tube Well Wing, Muzaffarpur
- 6. The Executive Engineer Tube Well Division, Muzaffarpur

.... Respondents

With

Civil Writ Jurisdiction Case No. 20299 of 2011

=====

Shiv Shankar Mishra Son Of Late Shatrughan Mishra Resident Of Village - Budh Nagra Radha, P.S. Mushahari, District - Muzaffarpur, Retired Electrician In The Office Of Executive Engineer, Tube Well Division, Muzaffarpur

.... Petitioner

Versus

- 1. The State Of Bihar
- 2. The Secretary, Minor Irrigation Department, Government Of Bihar, Patna
- 3. The Finance Secretary, Finance Department, Government Of Bihar, Patna
- 4. The Co-Ordinator-Cum-Chief Engineer, Tube Well Project, Muzaffarpur
- 5. The Chief Engineer, North Tube Well Wing, Muzaffarpur
- 6. The Executive Engineer, Tube Well Division, Muzaffarpur

.... Respondents

=====

Appearance :

For the Petitioners : Mr. Vijay Kumar Singh, Advocate
For the Respondents : Mr. Alok Ranjan, A.C. to A.A.G.5
A.C. to A.A.G.4

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date: 21-02-2018

These writ applications are based on common



facts and the issues involved in all these writ applications are identical in nature, therefore all the writ applications have been tagged and heard together for adjudication and disposal.

2. The writ petitioner namely, Ram Bali Mishra, in CWJC No. 30/2011, claims that he was provisionally appointed as an Electrician Grade-II in the work charge establishment in the Sub-Divisional Office, Tube-Well (Workshop) in the pay scale of Rs. 240-6-300-EB-8-396 vide letter no. 988 dated 06.06.1973 and pursuant to his appointment, he joined in the concerned office on 08.06.1973. He got replacement scale of Rs. 535-10-645-15-693-EB-15-765 pursuant to the recommendation of the 4th Pay Revision Committee report and was granted 1st Time Bound Promotion w.e.f. 08.06.1983 in the scale of Rs. 580-10-620-15-770-EB-15-860. His pay scale was revised by the Executive Engineer vide his letter no. 91 dated 06.02.1991 in the scale of Rs. 680-15-890-15-965. He was granted pay scale of Rs. 1200-30-1800 w.e.f. 01.03.1986, but subsequently the said pay scale was revised in the pay scale of Rs. 1320-30-1560-40-2040 vide letter no. 86 dated 05.02.1991 issued



under the signature of the Executive Engineer. It is his case that pursuant to the resolution no. 6021 dated 18.12.1989, the petitioner was granted pay scale/replacement pay scale in the pay scale of Rs. 1400-40-1800-50-2300 w.e.f. 01.01.1986. It is also the case of the petitioner that in view of the Finance Department Resolution No. 660 dated 08.02.1999, the petitioner was granted pay scale of Rs. 4000-100-6000 w.e.f. 01.01.1996. A photocopy of the pay fixation form of the petitioner has been enclosed as Annexure-6 to the writ application.

3. The petitioner further states that pursuant to letter no. 630 dated 21.01.2010 issued by the Finance Department, he was granted pay scale of Rs. 5,200-20,200 w.e.f. 01.01.2006 and the pay of the petitioner was fixed at Rs. 14,120/-.

4. The petitioner got aggrieved when the respondent no. 5 issued a letter bearing no. 460 dated 30.04.2010, whereby and whereunder he has been pleased to reduce the pay scale of the Electrician w.e.f. 01.01.1971 to 01.01.1996 without any valid justification and also held that the earlier fixation of pay scale of Electrician in the pay scale



of Rs. 4000–6000 is against the Finance Rules and also directed the respondent no. 6 to re-fix/reduce the pay scale of Electrician and recover the excess payment withdrawn by them on the basis of their earlier fixation either from their salary or from their retiral benefits.

5. The petitioner has further stated that in the case of Yogendra Prasad Singh vs. State of Bihar and others, a letter has been issued by the Joint Secretary of the Minor Irrigation Department vide his memo no. 539 dated 05.02.2001 admitting that the pay scale of Rs. 4000 – 6000 was admissible to the Electrician in view of the order of this court. A copy of this letter has been brought on record as Annexure-8 to the writ application.

6. The petitioner has challenged further consequential action of respondent no. 6 as contained in letter no. 1522 dated 14.08.2010 by which the respondent no. 6 has been pleased to reduce pay scale of petitioner as Electrician on different stages of fixation of pay scale and also ordered for adjustment of the excess payment withdrawn by him. Letter of respondent no. 6 is Annexure-9 to the writ application. Thus, Annexure-7 which has been issued by



respondent no. 5 and Annexure-9 issued by respondent no. 6 are under challenge.

7. In the case of Ram Kishore Sah, in CWJC No. 681/2011, it is claimed that he was initially appointed as a Tube-Well Mate by the Sub-Divisional Officer in the Tube-Well vide letter no. 30 dated 20.02.1973 which was approved by Tax Wing Tube-Well Division, Muzaffarpur and pursuant thereto he submitted his joining in the concerned office on 21.02.1973. He was promoted as an Electrician vide T.O. No. 2340 dated 21.11.1981 w.e.f. 21.11.1989 in the pay scale of Rs. 220 – 315. Pursuant to letter no. 1117 dated 21.11.1996 of the Finance Department, this petitioner was granted revised pay scale in the scale of Rs. 1200 – 1800 w.e.f. 01.01.1986. It is his case that in view of the Finance Department Resolution No. 660 dated 08.02.1999, he was granted the pay scale of Rs. 4000-100-6000 w.e.f. 01.01.1996 (Annexure-2). He has further stated that pursuant to the letter no. 630 dated 21.01.2010 issued by the Finance Department, he was granted pay scale of Rs. 5,200-20,200 w.e.f. 01.01.2006 and the scale of the petitioner was fixed at Rs. 11,240/- on 01.01.2006. He is also aggrieved by the letter



no. 460 dated 30.04.2010 issued by the respondent no. 5 and the consequential letter bearing no. 1493 dated 11.08.2010 (Annexure-6) issued by the respondent no. 6 by which he has ordered for adjustment of the excess payment withdrawn by this petitioner. He has submitted that if the earlier fixation of the Electrician was done against the finance rules, for that the respondents themselves were liable for committing wrong and not the employee concerned as such the employee cannot be punished.

8. Another petitioner Nawin Kumar, in CWJC No. 20365/2011, has stated that he was initially appointed as an Electrician in the Minor Irrigation Department in the year 1974, the rest of the statements and claim of this petitioner is similar to the statements and contentions of the aforementioned two petitioners.

9. Sri Shiv Shankar Mishra, in CWJC No. 20299/2011, has stated that he was initially appointed as an Electrician in the Minor Irrigation Department in the year 1973 pursuant thereto he submitted his joining in the concerned office on 07.06.1973. He has stated that when the 3rd Pay Revision Committee report was accepted by the



government, the pay scale of the petitioner was fixed in the pay scale of Rs. 240 – 396. He has further stated that the State Government accepted the 4th Pay Revision Committee report and in view of that the pay scale of the petitioner was fixed by respondents in the pay scale of Rs. 535-10-645-15-690-EB-15-765 w.e.f. 01.04.1981, it was admissible to the Electrician. In view of his statutory service, the petitioner was converted into regular establishment w.e.f. 13.08.1986 on the post of Electrician pursuant to the Notification No. 4648 dated 13.08.1986 issued by the Special Secretary, Minor Irrigation Department. He has went on narrating the same claim showing how he got the revised scale of pay and was finally fixed in the pay scale of Rs. 4000-100-6000 w.e.f. 01.01.1996 and in the pay scale of Rs. 5,200 – 20,200 w.e.f. 01.01.2006 in view of the Finance Department Memo No. 630 dated 21.01.2010.

Submission of the writ petitioners

10. In course of argument, learned counsel for the petitioner relied upon the resolution no. 30th November, 1972, by which the government considered the recommendations of the 3rd Pay Revision Committee report



and decided to revise the existing pay scales to the pay scales shown in Schedule – I annexed to the notification. Learned counsel submits that at serial no. 119 under chapter XXXVIII which applied to the Works Department including the Irrigation and Electricity Department, the post of Bijli Mistri had the existing scale of pay of Rs. 115 – 225 which was placed in the revised scale of Rs. 240-6-300-EB-8-396.

11. Learned counsel submits that the petitioners in all these cases were appointed as Electrician which means they were appointed against the sanctioned post of Bijli Mistri in the given pay scale. Learned counsel has thus submitted that thereafter what has been paid to the petitioners are all either the replacement scale or on account of the time bound promotion which the petitioners got and subsequently were placed in their respective revised scale.

12. Learned counsel further submitted that the respondent State has in fact accepted in the letter vide Memo no. 534 dated 05.02.2002 (Annexure-8) issued under the signature of the Secretary, Minor Irrigation Department, Patna that in the Irrigation Department for the basic category of post the revised scale of pay w.e.f. 01.01.1996 has been



sanctioned by the Finance Department in the scale of Rs. 4000 – 6000. Based on this advise in the cases of the concerned employee namely, Yogendra Prasad Singh, pay fixation should be done and affidavit be filed in the writ application. According to the petitioners, this letter dated 05.02.2002 clearly demonstrates that the Finance Department had sanctioned the scale of pay of Rs. 4000 – 6000 for the post of Electrician.

13. Learned counsel has further submitted that in reply to the information asked for under the provisions of the Right to Information Act (in short the “RTI”), applicant was informed by Annexure-‘19’ issued under the signature to the Chief Engineer (South), Tube-Well Division, Minor Irrigation Department, Sheikhpura, Patna that in south region w.e.f. 01.01.1996, there is no separate post of ‘Bidhyutak Grade – I, II & III’, rather there is a post of ‘Bidhyutak’ with the scale of pay of Rs. 4000 – 6000. It has further been informed that the directly appointed ‘Bidhyutak’ are getting the benefit of 1st ACP on completion of 12 years of service and thereafter on completion of 24 years of service in the scale of pay of Rs. 4500 – 7000 and Rs. 5000 – 8000 respectively.



14. Learned counsel has heavily relied upon Annexure-19 and submitted that there cannot be two different scales of pay of Electrician in other region, if those who are working in the south region, Tube-Well Division, are getting the scale of pay of Rs. 4000 – 6000, these petitioners cannot be deprived of getting the same. In case of Ram Bali Mishra, learned counsel has shown from his service book to this court that his initial appointment was as Electrician Grade – II in the Work Charge Establishment in the pay scale of Rs. 240-6-300-EB-8-396, learned counsel submits that there was an existence of post of Electrician Grade – II and the scale of pay approved for the same by the Government.

15. Learned counsel for the petitioners has further submitted that in Darbhanga Division also the scale of Rs. 4000–6000 is being allowed. Further referring to Annexure-11 attached with rejoinder to the counter affidavit filed on behalf of the respondents which is an office order dated 15.11.2008 issued by the office of the Chief Engineer (South), learned counsel submits that by the said order, several persons similarly situated to the present petitioner have been granted the benefit of the pay scale of Rs. 4000 -



6000. He has specifically referring the name of Sri Umesh Prasad Singh, Bidhyutak and Sri Vijay Shankar Singh, learned counsel further submits that the pay fixation of the petitioner was being done after thorough checking and verification by the District Accounts Officer, Pay Fixation Section, Muzaffarpur, and therefore scale of pay allowed to the petitioners were only after being satisfied by the competent authority that the petitioners are entitled for the said scale, hence no fault may be found with the fixation of pay scales to these petitioners.

16. Learned counsel for the petitioners has preferred and relied upon a judgment of this Court in the case of Taufiq Ahmad vs. State of Bihar and others (Annexure-18), which is attached with the rejoinder to the second supplementary counter affidavit filed on behalf of the respondent nos. 5 & 6. Learned counsel submits that in the said case a co-ordinate bench of this court had quashed the letter no. 706 dated 27.04.2004 issued by the Executive Engineer, Tube-Well Division, Bhagalpur by which he had directed for recovery of Rs. 53384/- from leave encashment and gratuity of the petitioner on the ground that the



petitioners pay fixation was wrongly done and also that time bound promotion was wrongly given w.e.f. 01.01.1981. In the said case, the petitioner was appointed on the post of Electrician in the Work Charge Establishment on 01.01.1967 in the pay scale of Rs. 115-227/-, his services was regularized w.e.f. 01.01.1968. On revision of pay scale on different categories of employees on the basis of the report submitted by the 3rd Pay Revision Committee w.e.f. 01.01.1971, the petitioner's case was that the scale of Electrician was 115 – 227 and its revised scale on the report of 3rd Pay Revision Committee was Rs. 240 – 396. Accordingly, his pay was fixed in the revised scale.

17. Learned counsel further submits that in view of the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab vs. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC 696 = (2014) 8 SCC 883***; the recovery of alleged excess amount is not just and proper. Learned counsel submits that the case of these petitioners would be fully covered under one of the categories enumerated to paragraph 12 of the judgment of the Hon'ble Apex Court and hence, in any case, the order passed by the authorities to the



extent it direct recovery of excess amount from 01.01.1971 must be held to be erroneous and the same is liable to be set aside.

Submission of the State

18. On the other hand, learned counsel representing the State relying upon the counter affidavit and supplementary counter affidavit filed on behalf of the respondent nos. 5 & 6, has taken a stand that the pay scale of Electrician was under consideration of the Finance Department and the Finance Department ultimately gave its recommendation to the Minor Irrigation Department (now Minor Water Resources Department) that was conveyed to Accountant General, Bihar and also to the office of respondent nos. 4 & 5 by Minor Irrigation Department vide letter no. 2512 dated 27.05.2006. According to the respondents, the pay scale recommended by the Finance Department from time to time is as under:

<u>Date</u>		<u>Sanctioned Pay Scale</u>
01.01.1971	-	220 – 315
01.04.1981	-	425 – 605
01.01.1986	-	950 – 1400
01.01.1996	-	3050 – 4590

19. It is the case of respondent no. 5 & 6 that



the petitioners were getting higher pay scale than admissible. Since the petitioners were getting higher pay scale right from their joining and they got replacement scale, every time that created the liability of excess payment. It is also stated in the counter affidavit that a departmental letter no. 2512 dated 27.05.2006 was issued regarding the pay scale of Electrician. In compliance of the said letter, a letter no. 460 dated 30.04.2010 was issued by respondent no. 5 and thereafter the Executive Engineer (respondent no. 6) Tube-Well Division, Muzaffarpur reduced the pay scale of petitioner vide letter no. 1522 dated 14.10.2010.

20. In the counter affidavit it has been categorically stated that earlier vide departmental letter no. 539 dated 05.02.2006, the pay scale of Electrician was circulated as Rs. 4000 – 6000 from 01.01.1996, but it was corrected by another letter no. 2512 dated 27.05.2006. In this regard reliance has been placed on Annexure-A to the counter affidavit which is a copy of the letter dated 27.05.2006. It is the case of respondent no. 5 & 6 that the petitioner has not brought to the notice of this court the said Annexure-A and thereby have misled this court. It is their case



that no government servant can demand higher pay scale than that of admissible or recommended by Finance Department. The recommendation of the pay scale for Electrician, according to these respondents, is of Rs. 3050 – 4590/- from 01.01.1996.

21. In the supplementary counter affidavit filed on behalf of the respondent nos. 5 & 6 it is stated that pursuant to the order passed by the Hon'ble High Court in Taufiq Ahmad's case, the issue of grant of pay scale of the Electrician of Tube-Well Division was referred to Finance Department. Finance Department has opined on 13.05.2006 about the pay scales which were admissible as has been shown hereinabove to the Electrician of Tube-Well Division. In paragraph 8 & 9 of the supplementary counter affidavit it has been stated that a show cause has been issued to all the Electricians of different Tube-Well Divisions vide Minor Water Resources Department letter no. 4892 dated 09.10.2006 including the petitioner whose name appears at serial no. 34. The Electricians have submitted a reply of show cause which was forwarded to Project Co-Ordinator, Tube-Well Wing, Patna with a direction to dispose of the same as per the



advice of Finance Department in Taufiq Ahmad case.

22. Respondent nos. 5 & 6 have contended that the determination of admissibility of pay scale is a subject matter of pay commission or fitment appellate committee. This body determines the pay scale admissible to different posts in the State Government and submits its recommendations. It is further stated that taking into consideration the recommendation of this statutory body the State Government accepts the recommendation as per the availability of resources to the State. As per rules of Executive business, Finance Department sanctions pay scales. Thereafter, the order passed by the Hon'ble High Court in CWJC No. 12231/2009 (Harendra Prasad Singh Vs. State of Bihar and others) has been referred and it has been submitted that the representation of Sri Harendra Prasad Singh for granting the pay scale of Rs. 4000 – 6000 has been rejected vide order no. 80 dated 19.04.2010 (Annexure-E to the counter affidavit), regarding the communication made by the Chief Engineer (South), Tube-Well Wing, Patna, it is stated that in para-3 of the said letter it is specifically stated that in future if some error is located, this order will be quashed and



the amount paid over and above the entitlement will be recovered from the pay/pension of the concerned employee. It is stated therein that the order requires amendment accordingly and the field officials again be directed to ensure that pay scale of Rs. 220 -315, 425-605, 950-1400 and Rs. 3050-4590 should only be allowed to the Electricians w.e.f. 01.01.1971, 01.04.1981, 01.01.1986 and 01.01.1996 respectively. In paragraph – 12 of the supplementary counter affidavit, it is stated **“Thus all the annexure annexed by the petitioner are going to be withdrawn in accordance with law. The petitioner cannot take any mileage. The petitioner has concealed this important fact in writ petition as well as rejoinder petition with ulterior motive to misrepresent the facts before Hon’ble High Court.”**

23. Regarding the case of **Yogendra Prasad Singh and others vs. State of Bihar** while explaining the grant of pay scale of Rs. 4000 – 100 – 6000, it is stated that in the said case the Hon’ble court had not given any direction to grant pay scale rather it was issued at the departmental level in response to letter no. 539 dated 05.02.2001. Thus implied by it is admitted that in case of Yogendra Prasad Singh



Finance Department had allowed the pay scale of Rs. 4000-100-6000. Further it has been repeatedly stated that the opinion of the finance department was received in the year 2006 when it was sought for with respect to the case of Taufiq Ahmad and in the light of the said advice the regional officials had been directed. In paragraph 15 of the supplementary counter affidavit, it is further stated that so far as allegation regarding other deductions are concerned, the same are provisional orders and are going to be amended suitably. It is also stated that the department contemplates to issue show cause to the erring officials as to how these orders were not amended as per the directive by Minor Water Resources Department vide letter no. 2512 dated 27.05.2006.

24. In the second supplementary counter affidavit filed on behalf of the respondent nos. 5 & 6, photocopies of the Finance Department's opinion obtained in the file and relevant portion of the resolution of the Finance Department have been brought on record. Learned counsel has pointed out that on perusal of the office notes and the notifications of the Finance Department it would appear that the Minor Water Resources Department has been shown at



serial no. 20 and thereunder the pay scale of Rs. 3050–75–3–950–80–4590 has been provided as replacement pay scale of Rs. 950–1400 which was meant for Electrician Grade – III in field establishment. The petitioner has refuted the stand taken by the respondent nos. 5 & 6 by filing the rejoinder to the second supplementary counter affidavit in which it is stated that the 6th Pay Revision Committee report prescribed pay scale of Electrician Grade – III at Rs. 1200 – 1800 and the replacement pay scale at Rs. 4000 – 6000 which is evident from Annexure-15 of the rejoinder to the counter affidavit. It is submitted that the Minor Irrigation Department obtained opinion of the Finance Department only with respect to pay scale of Electrician working in the Work Charge Establishment, though the petitioner is working in the regular establishment of the department since 08.06.1978 which is evident from the service book of the petitioner namely, Ram Bali Mishra. It is reiterated that the prescribed pay of Electrician Grade – III is Rs. 4000 – 6000 w.e.f. 01.01.1996 and the same is binding for all the departments in the State and accordingly the respondent authorities fixed the pay scale of the petitioner but at the fag end of the service the



respondent authorities issued the order or reduction of the pay scale which is illegal, arbitrary and bad in law. A copy of the service book of the petitioner Ram Bali Mishra and the copy of the resolution no. 660 dated 08.02.1999 as also copy of the orders passed by a co-ordinate Benches of this court in the case of Yogendra Prasad Singh vs. State of Bihar and others and in the case of Harendra Prasad Singh vs. State of Bihar and others have been brought by way of annexures to the rejoinder of the petitioner.

25. Learned counsel has relied upon Annexure-15 which is the notification of the Finance Department to show that in regional establishment post of Electrician Grade – II had the pay scale of Rs. 1200 -1800 which was replaced by pay scale of Rs. 40000 – 6000. Similarly, the scale of pay of Electrician Grade – I in regional establishment has been shown at Rs. 4000 -6000 in the revised scale.

26. The Finance Secretary, Department of Finance, Government of Bihar has been impleaded as respondent no. 3 in the present writ application, but no counter affidavit has been filed on his behalf in order to assist this court in reaching to a just and proper conclusion. The



whole case of respondent nos. 5 & 6 is dependent upon the notifications of the Finance Department, Government of Bihar by which the Fixation of pay scale of the Electrician has been done.

Consideration

27. Having appreciated the rival submissions at the bar and on perusal of the records, I find that a dispute with regard to fixation of pay scale for the post of Electrician in field establishments has arisen in the present case. In this regard, the dispute which traveled to this Court at the earliest opportunity is the case of Yogendra Prasad Singh and others vs. State of Bihar and others vide CWJC No. 9010/1999. The writ petitioners in the said case prayed for a direction upon the respondents to grant pay scale of Rs. 4000 -6000 w.e.f. 01.01.1996 which was prescribed for Electrician Grade – I and also to fix the pay of the petitioner in pay scale of Rs. 730-1080 w.e.f. 01.04.1981, pay scale of Rs. 785-1212 w.e.f. 04.12.1982 and pay scale of Rs. 1400-2600 w.e.f. 01.01.1996 respectively.

28. During the pendency of the writ application, the State respondents on their own redressed the grievance



of the petitioner Yogendra Prasad Singh and fixed the pay scale of the petitioner in Rs. 4000-6000 w.e.f. 01.01.1996. This Court had only directed the Superintending Engineer, Tube-Well Circle, Mithapur, Patna to consider and dispose of the application filed by the petitioner and to decide the claim of the petitioner in terms of prayer made in the writ application as have been taken note of hereinabove.

29. Thereafter, the case of Taufiq Ahmad came to this court vide CWJC No. 15337/2004. The petitioner in the said case had already retired from service. He was initially appointed in the work charge establishment in the pay scale of Rs. 115-227. His service was regularized w.e.f. 01.01.1968. The government revised the pay scale of different categories of employees on the basis of report submitted by the 3rd Pay Revision Committee w.e.f. 01.01.1971. The petitioner was allowed the revised scale on the report of 3rd Pay Revision Committee in the pay scale of Rs. 240-396. In this background he got time bound promotion and the revised scales. At the time of his retirement from service on 30.06.2000 he was getting his salary in the scale of Rs. 4000-6000. Four years after his retirement from service he was served with letter no.



703 dated 27.07.2004 directing for recovery of Rs. 53,384/- on the ground that his pay fixation was wrongly done. A co-ordinate Bench of this court considered the submissions made at the bar and quashed the letter no. 703 dated 27.07.2004. A direction was issued to refund the amount which was already recovered from the leave encashment and gratuity of the petitioner. The Court also directed to fix his pension considering the first and second time bound promotion given to the petitioner and the entire arrears of pension, leave encashment and gratuity were directed to be paid within four weeks.

30. Although the respondent nos. 5 & 6 in their counter affidavit has enclosed letter no. 2512 dated 27.05.2006 stating that steps are being taken to file Letters Patent Appeal (L.P.A.) against the order dated 15.12.2005 passed in CWJC No. 15337/2004 (Taufiq Ahmand's case), no statement has been made in the counter affidavit as to whether or not the L.P.A. was filed and if filed what happened to the same. In the counter affidavit filed on behalf of the State, it is stated that the department letter no. 539 dated 05.02.2006 by which the pay scale of Electrician was



circulated as Rs. 4000-6000 from 01.01.1996 was corrected by another letter no. 2512 dated 27.05.2006 but a reading of the letter no. 2512 dated 27.05.2006 would show that the letter does not talk of any correction and there is no reference to correct the departmental letter no. 539 dated 05.02.2006. This letter dated 27.05.2006 only mentions same pay scales said to have been approved by the Finance Department but there is no basis of mentioning those pay scales, moreover the letter is specific to the case of Taufiq Ahmad.

31. The petitioner has brought on record Annexure-8 which is said to be a copy of the memo no. 539 dated 05.02.2001 by which the pay scale of Rs. 4000-6000 was shown to have been approved by the Finance Department and admittedly the benefit of this letter no. 539 has been based on Yogendra Prasad Singh's case, who was the writ petitioner in CWJC No. 9010/1999. It appears that in the counter affidavit filed on behalf of the State the date of letter no. 539 has been wrongly typed as 05.02.2006, the typed copy of Annexure-8 enclosed with the writ application shows memo no. 534 dated 05.02.2001 but in the statement part of the writ petition in paragraph 20, Annexure-8 has



been referred as memo no. 539 dated 05.02.2001. Whatever be the date of this Annexure-8, one thing is clear that by this Annexure-8 the Secretary, Minor Irrigation Department, Government of Bihar communicated to the Joint Secretary, Minor Irrigation Department, Government of Bihar with a copy to the Chief Engineer (South) Tube-Well Division, Patna/Superintending Engineer, Tube-Well Division, Patna and Executive Engineer, Tube-Well Division, Patna (East) that the Finance Department had sanctioned the revised scale of Rs. 4000-6000 w.e.f. 01.01.1996 to the employees of the basic grade and based on that a request was made to fix the scale of pay of Yogendra Prasad Singh and to file an affidavit in this regard in the court which was accordingly done. Although the respondent nos. 5 & 6 claimed in the supplementary counter affidavit that said letter was corrected by letter dated 27.05.2006 as contained in Annexure-A, there is no specific statement in Annexure-A talking of any correction.

32. The next case was of Harendra Prasad Singh in CWJC No. 12231/2009 which was disposed of vide order dated 15.09.2009 directing the departmental Secretary to decide the representation of the petitioner against the order



of the Executive Engineer dated 23.06.2009. The said representation of Harendra Prasad Singh has already been rejected now. It appears that while the case of Taufiq Ahmad was being considered the District Accounts Officer, Bhagalpur wrote a letter no. 1035 dated 11.08.2003 (Annexure-F) to the Executive Engineer, Tube-Well Division, Bhagalpur. In his letter, he claimed that upon examination of the facts he found that the pay scale for Electrician Grade – II was fixed in Rs. 240-396, but because Taufiq Ahmad was appointed on the post of Electrician, therefore, a clarification was sought for as to from which letter of the Finance Department the pay scale of Rs. 240-396 was fixed for the Electrician.

33. In these circumstances when the said Taufiq Ahamad moved this Hon'ble Court, the files were moved in the Finance Department and the Finance Department merely reiterated and repeated the scale of pay shown by the District Accounts Officer, Bhagalpur in his letter no. 1035. The office note however nowhere mentions the basis of the said scale of pay. It nowhere refers the Finance Department's notification, if any, issued by the Finance Department for the post of Electrician in the pay scale of Rs. 240-396. As regards the



opinion given by the Finance Department in the case of Yogendra Prasad Singh in CWJC No. 9010/1999, the office note at one place states that the concerned file relating to the opinion in the said case is not available.

34. A perusal of the notification of the Finance Department based on the recommendation of the 3rd Pay Revision Committee shows that in the 3rd Pay Revision Committee recommendations, in the work charge establishment, there was a post of Electrician Grade – I in the scale of Rs. 220-250 and Electrician Grade – II in Rs. 150-200. In 3rd Pay Revision the pay scale of Electrician Grade – II was revised in the replacement scale of Rs. 240-6-300-EB-8-396. There was another post of Electrician cum Charge-man in the work charge establishment in the existing pay scale of Rs. 150-200 which were also revised and the replacement scale was Rs. 240-6-300-EB-8-396.

35. It is, therefore, apparent from resolution dated 30th November, 1972 of the Finance Department that pursuant to the recommendation of the 3rd Pay Revision Committee, government approved and notified the revised scale of pay for the different posts held in the Works Charge



Establishment. In the regular Establishment, the post of Bijli Mistri (Electrician) at serial no. 119 had an existing scale of Rs. 115-225 which was revised in the scale of 240-6-300-EB-8-396. Similarly in the work charge establishment the Electrician Grade – II who had existing scale of pay in Rs. 150-200 were placed in the revised scale of Rs. 240-6-300-EB-8-396. The service book which has been brought on the record by petitioner Ram Bali Mishra clearly demonstrates that he was appointed as temporary and provisionally in Electrician Grade – II in the work charge establishment in the scale of Rs. 240-6-300-EB-8-396 on 08.06.1973 when the government's resolution notifying the scale of pay as stated above had already come in force.

36. I am, therefore, of the *prima facie* opinion that the petitioner Ram Bali Mishra was rightly provided the scale of pay applicable to the Electrician Grade – II in the work charge establishment. The stand of respondent no. 5 & 6 in the case of Yogendra Prasad Singh who was also working on the post of Electrician and in whose respect information was sought from the Finance Department and then benefit of the revised pay scale to Rs. 4000-6000 was provided to him has



been sought to be played down by taking a completely vague stand that a letter dated 27.05.2006 (Annexure-A to the counter affidavit) of respondent nos. 5 & 6 was issued for a correction. The said letter dated 27.05.2006 was issued while considering the case of Taufiq Ahmad based on a totally baseless opinion of the Finance Department that the pay scale applicable to said Taufiq Ahmad was in the pay scale of Rs. 3050-4590. No reference of any notification of the Finance Department has been provided in the office notes of the Finance Department which has been brought on the record by way of Annexure-G to the second supplementary counter affidavit of respondent nos. 5 & 6. The office notes are based on the figure picked up from the letter of the District Accounts Officer who has wrongly mentioned in his letter no. 1035 the scale of pay provided to the Electrician in the work charge establishment w.e.f. 01.01.1971. Even the said letter no. 1035 mentions the scale of pay of Electrician Grade – II as Rs. 240-396.

37. I have already noticed hereinabove that as per the resolution of the Finance Department dated 30th November, 1972 which was based on the recommendation of



the 3rd Pay Revision Committee and was made applicable w.e.f. 01.01.1971, there was a post of Electrician Grade – II in the Work Charge Establishment. The post of Electrician Grade – I had a scale of Rs. 220-250 which was revised to Rs. 296-8-360-EB-9-423 whereas scale of pay of Electrician Grade-II was revised in the scale of Rs. 240-6-300-EB-8-396. The District Accounts Officer in his letter no. 1035 wrongly took note of the pay scale of Rs. 220-315 for the Electrician by vaguely showing that the pay scales stated in his letter are sanctioned by the Finance Department for the work charge establishments through its various resolutions. What are those resolutions are not mentioned nor have been brought on the record. These petitioners were initially appointed in the work charge establishment but thereafter they were brought in regular establishment where there was only post of Electrician (Bijli Mistri) in the scale of Rs. 240-396. There is no denial of this fact that they were brought in the regular establishment and their pay was fixed accordingly as per the replacement scale w.e.f. 01.01.1986 in the scale of Rs. 1400-2300. The petitioners have enclosed the pay fixation form and it is their specific case that the pay fixation was done by the



District Accounts Officer, Pay Fixation Section, Muzaffarpur. It appears that on the basis of the letter no. 1034 issued by the District Accounts Officer mentioning the scale of pay applicable to the Electrician in the work charge establishment further office notes were moved without considering the fact that the petitioner like Ram Bali Mishra was appointed as an Electrician Grade – II in the work charge establishment and was later on brought in the regular establishment were rightly given the scale of pay applicable to the post on which they were regularized in the regular establishment. As a result of this mistake in not appreciating that these petitioners were brought in the regular establishment against the vacant sanctioned post to which a pay scale was duly attached and they were paid accordingly, in haste, the Administrative Department reached to a conclusion that the entire pay fixation of the petitioners have been wrongly done.

38. I wish the Department of Finance should have shown more responsibility by throwing some light on the ongoing disputes but because they have not come forward to assist this Court, the Court has attempted to find out from the records the position as emerging out and has



discussed those documents and facts in detail in order to ascertain the correct position.

39. Considering the importance of the issues and the fact that the entire stand of respondent nos. 5 & 6 is based on the so-called decision of the Finance Department, Government of Bihar in the matter of fixation of the pay scale, I would direct the Finance Secretary, Department of Finance, Government of Bihar, to consider the entire facts and circumstances in the light of the discussions made hereinabove and after going through its own decisions/resolutions from time to time vis-à-vis the claim of the petitioners he would pass a reasoned order clearly setting out the applicable pay scales of the post of Electrician Grade – II or Tube-Well mate or Electrician in the Work Charge Establishment as claimed by these petitioners. further the Finance Secretary would take a decision as to the pay scales which would be available to these petitioners on their entering into the regular establishment on the sanctioned post.

40. The Service Book of the petitioners would be a relevant document to be examined in order to find out



their date of entry on a particular post in the work charge establishment and then their entry in the regular establishment. From the records, it is apparent that the Chief Engineer (South) of the Administrative Department has clearly stated that pay scale of Rs. 4000-6000 was being provided in his civil division. The Administrative Department has come out with a lot of statement that action are being taken to withdraw those letters and show causes etc. have been issued but it seems from the tone and tenor of this counter affidavit that those are only a half hearted statement. Till date, this Court has not been made aware of any action taken in this regard. This fact should also be considered by the Finance Secretary, Department of Finance, Government of Bihar while taking a decision as directed hereinabove.

41. By taking note of the statement of the Administrative Department, this Court is not approving the stand of the Department, this court would not form any opinion on this issue at this stage when the Court is directing the Finance Secretary, Government of Bihar to consider the entire matter afresh and take a decision in accordance with law. The prima facie views and observations expressed by this



court in earlier part of this judgment are for sake of discussion and on the materials what transpired to this Court. The Finance Secretary shall however take a complete and independent view of the entire matter and take a decision accordingly.

42. Such a decision must be taken within a period of four months from the date of receipt/production of a copy of this order. Petitioners, either themselves or through their representatives, be allowed to be represented and hearing may also be given to them before passing final order.

43. The decision taken by the Finance Secretary, Department of Finance, Government of Bihar be also communicated to the petitioners within 15 days from the date of the decision.

44. Learned counsel for the petitioners has submitted that in any case the authorities of the State are not justified in passing an order for recovery of the so-called excess amount paid to the petitioners due to wrong fixation of their pay. Reliance has also been placed on the judgment of the Hon'ble Apex Court in the case of Rafiq Masih (supra). I have already taken note of the relevant paragraph from the



judgment of the Hon'ble Apex Court.

45. In the facts of the present case, this Court is fully convinced that these petitioners have never misrepresented the authorities of the State in the matter of fixation of their pay scale and in fact the authorities of the State have been taking conflicting stands as regards the pay scale applicable to them, therefore, the ratio of the judgment of the Hon'ble Supreme Court in the case of Rafiq Masih (supra) shall apply in these cases with full force.

46. These petitioners have already retired from service and they were serving as class-IV employees, the recovery has been sought for the period in excess of five years before the order of recovery was issued, in these circumstances, it would be just and proper to set aside the impugned orders as contained in Annexure-7 issued by the respondent no. 5 and consequent action by respondent no. 6 vide Annexure-9 to the writ application in the case of Ram Bali Mishra (1st writ application). Similar will be the fate of impugned orders in other three writ applications.

47. Till final decision is taken by the Finance Secretary, Department of Finance, Government of Bihar or



expiry of four months from the date of receipt/production of a copy of this order whichever is earlier, the consequential benefits arising out of quashing of the impugned orders shall remain in abeyance. It goes without saying that in case the Finance Secretary, Government of Bihar takes a decision by upholding the contentions of these petitioners, he would also consider paying the consequential benefits within a stipulated period fixed by him.

48. These writ applications are allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	23.01.2018
Uploading Date	21.02.2018
Transmission Date	NA

