

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12226 of 2017

1. Geeta Devi, W/o Late Siddhant Mahto, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna.
2. Anirudh Prasad, S/o Late Andhi Prasad, at present employed as Technical Assistant, at Rajendra Memorial Research Institute of Medical Sciences, (ICMR) Agamkuan, Patna.
3. Umesh Kumar, S/o Late Vaidhnath Prasad, at present employed as Technician- C at Rajendra Memorial Research Institute of Medical Sciences, (ICMR) Agamkuan, Patna.
4. Sudarshan Prasad, S/o Megha Das, at present employed as Technician- C at Rajendra Memorial Research Institute of Medical Sciences, (ICMR), Agamkuan, Patna.
5. Baidyanath Ray, S/o Kesav Ray, at present employed as Technician- B at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna.
6. Tathagat Gupta, S/o Kunal Gupta, at present employed as Technical Asstt, at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna.
7. Shamim Ahmad Khan, at present employed as Technician- B, Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna.
8. Devendra Pd. Yadav, S/o Surya Narayan Yadav, at present employed as Technician – B at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
9. Subhash Kumar, at present employed as Technician – C at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
10. Nageshwar Ram, S/o Late Jamuna Ram, at present employed as Driver at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
11. Lalbabu Chaudhary, S/o Late Dhutri Chaudhary, at present employed as Driver at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
12. Seraphinush Toppo, S/o Late Piter Toppo, at present employed as Driver at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
13. Arun Kumar Singh, S/o Kuseshwar Narayan Singh, at present employed as Driver at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
14. Sheonath Sharma, S/o Late Shahdeo Sharma, at present employed as Driver at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
15. Surajdeo Mishry, S/o Late Chandarik Mishtry, at present employed as Technician – A at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
16. Izharul Haque, S/o Late Ghulamnabi, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna



17. Ajeet Kumar, S/o Late Ramchandra Prasad, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
18. Shankar Kumar, S/o Late Jadu Ram, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
19. Manohar Kumar, S/o Raghunandan Baranwal, at present employed as Technician – B at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
20. Shankar Paswan, S/o Rameshwar Paswan, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
21. Madan Shah, S/o Mahatam Shah, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
22. Ajay Kumar, S/o Late Yamuna Prasad, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
23. Basu Devi, W/o Late Ramvrisha Sah, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
24. Jawahar Prasad, S/o Late Lalmohar Prasad, at present employed as MTS Plumber at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
25. Mahendra Kumar, S/o Late Tarni Mahto, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
26. R. B. Mahto, S/o Late Lakshmi Mahto, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
27. Ashok Kumar, S/o Late Rajendra Prasad Singh, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
28. Lal B. K. Yadav, S/o Late Sita Ram Yadav, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
29. Gopal Prasad Sharma, S/o Late Mishri Lal, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
30. Ajeet Kumar, S/o Gopal Prasad Sharma, at present employed as MTS Electric at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
31. N. K. Chaudhary, S/o Late K. Chaudhary, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
32. Pramanand Singh, S/o Sumant Singh, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
33. Ranjeet Kumar, S/o Ramchandar Prasad, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna



34. Uma Shankar Singh, S/o Ram Kishor Singh, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
35. Uday Shankar, S/o Late Bhola Prasad, aged 54 years, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
36. Ram Sharan Mahto, S/o Munsii Mahto, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
37. Ashok Kumar Sah, Late Dukham Sah, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
38. Madhuri Kumari, W/o Late Indradev Kumar, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
39. Dina Nath Ram, S/o Late Heera Ram, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
40. Shankar Ram, S/o Late Hari Lal, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
41. Vijay Kumar, S/o Late Ruplal Mahto, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
42. Kishan Mahto, S/o Late Munsii Mahto, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
43. Manoj Kumar, S/o Late Bindeshwar Sharma, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
44. Ravi Shankar Pandey, S/o Late Vivekanand Pandey, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
45. Santosh Singh, S/o Late Lallan Singh, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
46. Amar Kant Singh, S/o Ramanand Singh, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
47. Santosh Kumar at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna
48. Mumtaz Alam Khan @ Mumtaz Alam, S/o Mahfooz Alam Khan, at present employed as MTS at Rajendra Memorial Research Institute of Medical Sciences (ICMR), Patna

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, Govt. of India, New Delhi
2. The Under Secretary to the Government of India, Ministry of Health & Family Welfare (Hospital Section), Nirman Bhawan, New Delhi



3. The Director General, Indian Council of Medical Research (ICMR), V. Ramalingaswamy Bhawan, Ansari Nagar, New Delhi – 29
4. The Addl. Director General, Indian Council of Medical Research (ICMR)
5. The Director, Rajendra Memorial Research Institute of Medical Sciences (ICMR), Agamkuan, Patna
6. The Administrative Officer, Rajendra Memorial Research Institute of Medical Sciences (ICMR), Agamkuan, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Hemant Kumar Karn Advocate
For the Union of India	:	Mr. Anjani Kumar Sharan Asst. S.G.
For the Respondent Nos. 3-6:		Mr. Gautam Bose Sr. Advocate Mr. Vikash Jha Advocate Mr. Ajay Kumar Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 11-01-2018

O. A. Application of all these petitioners, numbering 48, against the decision of the Respondent - Rajendra Memorial Research Institute of Medical Sciences (hereinafter referred to as the “Institute” for short) to effect recovery from their salary of what was paid to them for a long period of time, known as Hospital Patient Care Allowance / Patient Care Allowance, has been dismissed by the Central Administrative Tribunal, Patna Bench, Patna, vide order, dated 11.07.2017. The order has been passed in O. A. No. 288 of 2017.



The brief facts without any controversy is that a large number of these Class-III and Class-IV employees, working in the Institute, have been extended the benefit of Patient Care Allowance from the year 2008. These grant of allowance has become the bone of contention in the year 2017, when a so called audit objection has been raised with regard to the kind of people who are entitled to draw the Patient Care Allowance. Based on the audit objection, decision for recovery was effected and therefore these petitioners rushed to the Central Administrative Tribunal, looking for protection. The Tribunal has gone by the principle that no employee can retain what he is not entitled to and since it is clear now that the Patient Care Allowance is not payable to a set of employees, who are not directly involved with that kind of duty, the order of recovery even in the face of the Supreme Court Judgement, rendered in the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc., reported in (2015) 4 SCC 334*, does not come to the rescue of these petitioners.

Learned counsel for these petitioners is not getting into the argument with regard to the entitlement. The submission is that even within the organization of the respondents, there have been complete confusion with regard to the entitlement. It has been authorized, then stopped, then again restored, then again allowed



to new set of employees and the employees working on different posts have drawn the advantage of the decision of the Institute to extend them the benefit of Patient Care Allowance. The Bulk of these petitioners are beneficiaries after the year 2013.

The stand of the counsel for these petitioners is that they have had no contribution to make in authorization of this allowance. They have drawn the allowance on the basis of authorization made by the respondent-Institute by a conscious decision and since there is no fraud or misrepresentation in deriving any advantage of the allowance in question and this has been drawn by the low paid employees, who are Class-III and Class-IV employees, recovery now will hit them hard economically.

The Court has noticed that the allowance has been extended for almost a decade now. The authorities have only woken up in the year 2017 on the basis of an audit objection. They have accepted the audit objection as sacrosanct and as a knee-jerk reaction they have started digging into the pocket of the employees to effect the recovery.

In our opinion this is not permissible, especially since these employees in terms of Rafiq Masih (supra) case are Class-III and Class-IV employees and they have been allowed this benefit over a long period of time and, therefore, at this stage, if this amount is



permitted to be recovered from their salary it will have an adverse effect, both on the employees as well as their family members. The amount of Rs. 27 lacs and 50 thousand is a cumulative amount, which has been worked out and this is not an individual amount of an individual employee. If it is divided amongst 48 employees it runs into some thousands of rupees and not lacs of rupees.

The Court, therefore, is of the opinion that Clause 1 of the Rafiq Masih (supra) as well as the DOPT's office memorandum, dated 2nd of March, 2016, which has been annexed as Annexure – P/7 to the writ application, which more or less is in conformity with the ratio of the decision of the Rafiq Masih (supra) case will come into play. The Tribunal to that extent has committed an error by permitting recovery from these employees from their pay.

The distinction which the Tribunal has tried to make that recovery pre-five years is not permissible and recovery is permissible post-five years is also an irrational distinction to make, because ultimately what is to be seen is whether these employees have illegally drawn the advantage of a higher pay or perk and in which they had no contribution to make.

The learned senior counsel submits that Annexure – D, annexed with the counter affidavit is the sheet-anchor of the decision on which the case of recovery should be based.



With due respect to learned senior counsel, what has been taken note of by us as to the factual position in no manner takes away the effect of the decision i.e. note of the DOPT's memorandum as well as the ratio of the decision of Rafiq Masih (supra). The omission or failure has been of the decision maker and for which the poor paid employees will not suffer.

As a desperate measure learned senior counsel falls on two decisions. One is a decision, rendered in C.W.J.C. No. 15245 of 2015, decided by this Bench on 12.01.2017, where the Court had permitted recovery to be made. In this regard we can only observe that the reading of this order coupled with the order passed in C.W.J.C. No. 15245 of 2015 explains the factual position itself as to why in the said case recovery was permitted and in this case it is not being permitted.

The other decision, which has been relied upon by learned senior counsel is a case of *High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh, reported in 2016 AIR SCW 3523*, where the Hon'ble Supreme Court, keeping in mind the undertaking given by the Officers of Superior Judicial Service that they would be liable for refund, if excess payment is made, interfered with the decision and allowed recovery.



The basic distinction which emerges from this decision is that the matter in question related to the Judicial Officers of Superior Judicial Service, who are highly paid government servants and they did not belong to the Class-III and Class-IV post, for which the ratio had been laid down by the Hon'ble Supreme Court in the case of Rafiq Masih (supra).

The aforesaid two decisions do not help learned senior counsel for the respondents in any manner.

Writ Application stands allowed.

The order of the Tribunal with regard to the order of recovery for the payments made for the last five years is set aside.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

skm/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	16.01.2018
Transmission Date	

