

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23726 of 2019

Prabhu Prasad, Son of Late Ramjeet Prasad, Resident of Village/Mohalla-
Plot No. L-2, House No. 57, Jagat Bihar Colony near Ashiyana Nagar, Police
Station- Shastri Nagar, District- Patna- 800025.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Patna.
2. Engineer-in-Chief-cum- Additional Commissioner-cum-Special Secretary, Road Construction Department, Patna, Bihar.
3. The Chief Engineer, Road Construction Department, N.H. (South), Patna, Bihar.
4. Superintending Engineer, N.H. Work Circle, Patna.
5. Executive Engineer, Mahatma Gandhi Setu Division, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anand Kishore Choudhary, Adv.

For the Respondent/s : Mr. Uday Shankar Saran Singh (GP19)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 29-11-2019

Heard the learned counsel for the parties.

2. The petitioner, who is a Junior Engineer in the
Road Construction Department, Govt. of Bihar, Patna has
prayed for setting-aside the Officer Order No. 23, dated
15.10.2019, contained in Memo No. 875, issued under the



signature of the Executive Engineer, Mahatma Gandhi Setu Pramandal, Patna, directing for recovery of the excess amount which has been paid to the petitioner by virtue of a wrong and unauthorized addition of one increment, despite the fact that the petitioner had not obtained computer literacy which was a necessary pre-requisite for grant of such increment in the salary.

3. It has been submitted on behalf of the petitioner that the requirement of passing the computer efficiency test was introduced only on 06.05.2015 in the Road Construction Department, Govt. of Bihar, Patna by way of a direction to the employees, particularly the Junior Engineers of the Supervisory Cadre, to undergo such test for making themselves eligible for payment of increment. This direction of the Department was not followed in letter and spirit and the increment to the petitioner and his likes was granted. Much later, during the course of audit, it was found that the petitioner and many others have been paid in excess of their entitlement and, therefore, a decision was taken for recovery of the amount which has been paid to the petitioner



and others in excess of their entitlement.

4. The learned counsel for the petitioner has submitted that he is a Class-III employee and, therefore, if the excess payment has not been made on his showing or wrong representation, the same ought not to be recovered from him. Apart from this, it has been urged that the petitioner, in the meanwhile, has privately obtained a certificate in computer literacy. This had to be resorted to by the petitioner and others as no arrangement was made by the Department to conduct any course in computer and after the direction for passing the test having been made compulsory, no test was also conducted by the Department. Under such situation, a further rule was issued on 24.05.2011, indicating that the requirement of passing the computer literacy test was introduced only for the purposes of improving the educational standards, but not passing such test would not invite punitive action.

5. In the background of the aforesaid facts, the learned counsel for the petitioner submits that the case of the petitioner would be covered by a decision of the



Supreme Court in ***State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and other analogous cases; (2015) 4 SCC***

334. The relevant paragraph of the aforesaid decision is being extracted hereinbelow for the sake of completeness:-

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 herein above, 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 of 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 for outweigh the equitable balance of the employer's right to recover.

6. Considering the aforesaid facts, this Court deems it appropriate to relegate the petitioner to the office of the Executive Engineer, Mahatama Gandhi Setu Division, Patna for him to pass a fresh order in accordance with law, keeping into account the aforestated position of law and the facts.

7. The petitioner is directed to make a suitable representation before the respondent No. 5, viz., the Executive Engineer, Mahatma Gandhi Setu Division, Patna within a period of four weeks from today, who, on receipt of such representation/petition, shall pass a reasoned order in accordance with law, as indicated above, within a further period of six weeks thereafter.

8. In the meantime, the order dated 15.10.2019 shall not be given effect to.



9. With the aforesaid observation/direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.12.2019
Transmission Date	N/A

